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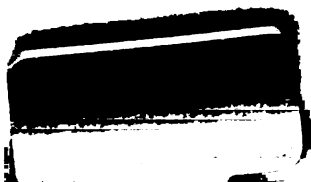
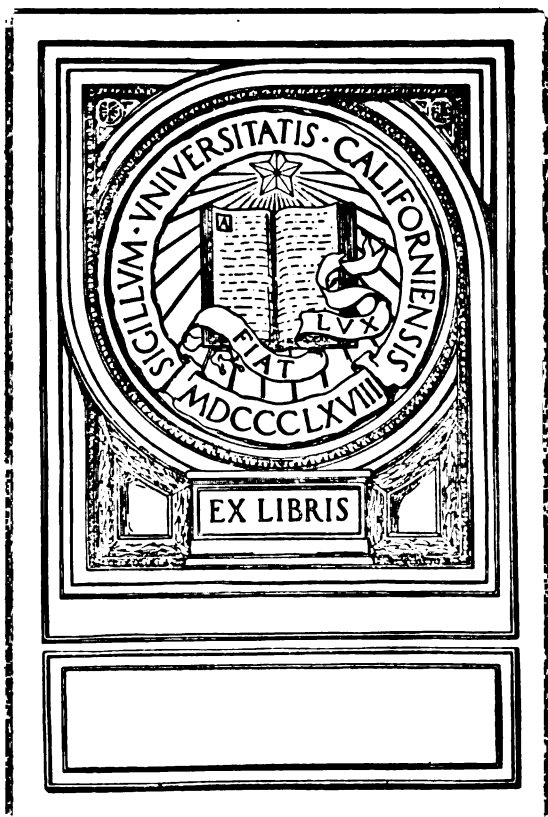
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bre: on

THE

Constitution of the United States.

Annotated

WITH

NOTES OF THE DECISIONS OF THE SUPREME COURT
THEREON, FROM THE ORGANIZATION OF
THE COURT TILL OCTOBER, 1900.

BY

EDWIN E. BRYANT,

Dean of the Law Faculty, University of Wisconsin.



MADISON, WIS.

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PREFACE.

This book is not a treatise. It merely gives the text of the Constitution of the United States, and under each article and clause a brief statement of what has been decided by the Supreme Court in expounding the same. No attempt is made at analysis of the Constitution or elaborate classification of the cases. The aim is to enable the student readily to find the cases in which the Court has interpreted the Constitution, indicating concisely the points decided in the cases cited.

E. E. B.

Madison, March 4, 1901.

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CONSTITUTION OF THE UNITED STATES

WITH ANNOTATION OF THE DECISIONS OF THE SUPREME
COURT THEREON.

PREAMBLE.

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

1. *The Constitution emanated from the people, not the State legislatures.*—1. "The Convention which framed the Constitution was, indeed, elected by the State legislatures. But the instrument, which came from their hands, was a mere proposal, without obligation or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might be submitted to a Convention of Delegates, chosen in each State by the people thereof under

the recommendation of its legislatures, for their assent and ratification.

2. "This mode of proceeding was adopted, and by the Convention, by Congress, and by the State legislatures the instrument was submitted to the people. They acted upon it, in the only manner in which they can act safely, effectively and wisely, on such a subject, by assembling in convention. It is true they assembled in their several States, and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separated the States, and of compounding the American people into one common mass. Of consequence, when they act they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves or become the measures of the State government.

3. "From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is ordained and established in the name of the people; and is declared to be ordained, 'in order to form a more perfect union, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity.' The assent of the States in their sovereign capacity is in calling the convention, and thus submitting that instrument to the

people. But the people were at perfect liberty to accept or reject it, and their act was final. It required not the affirmance and could not be negatived by the State governments. The Constitution was thus adopted.

4. "It has been said, that the people had already surrendered all their powers to the State sovereignties and had nothing more to give. But, surely, the question whether they may resume and modify the powers granted to government does not remain to be settled in this country. Much more might the legitimacy of the general government be doubted had it been created by the States. The powers delegated to the State sovereignties are to be exercised by themselves, not by a distinct and independent sovereignty created by themselves. For the formation of a league such as was the confederation the State sovereignties were certainly competent. But when, 'in order to form a more perfect union,' it was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them was felt and acknowledged by all." Ch. J. Marshall, *M'Culloch v. Maryland*, 4 Wheat., 404.

5. "The Constitution of the United States was ordained and established by the people of the United

States, for themselves, for their own government and not for the government of the individual States." "The people of the United States framed such a government for the United States as they supposed best adapted to the situation and best calculated to promote their interests." Ch. J. Marshall, in *Barron v. Mayor, etc., of Baltimore*, 7 Peters, 242. See Story on Constitution, Secs. 351, 367.

6. "The Constitution of the United States was ordained and established, not by the States in their sovereign capacities, but emphatically as the preamble of the Constitution declares, 'by the people of the United States.'" *Martin v. Hunter*, 1 Wheat., 304-324.

Mr. Tucker, in his *Constitution of the United States*, enters into an elaborate discussion. His contention is that the preamble means that the people of each of the States, by a convention thereof, ordained and established the Constitution. Tucker on Const., Secs. 123, 187. His view is that it was the people of each of the States rather than the people of the United States.

7. *The United States constitute one nation.*—"The people of the United States constitute one nation under one government, and this government within the scope of the powers with which it is invested is supreme. On the other hand, the people of each State compose a State,

having its own government, and endowed with all the functions essential to separate and independent existence. The State disunited might exist. Without the States in union there could be no such political body as the United States." Ch. J. Chase, in *Lane Co. v. Oregon*, 7 Wall., 71. "Without them, (the States,) the general government would disappear from the family of nations." *Collector v. Day*, 11 Wall., 125.

8. "That the United States form, for many purposes, a single nation is not denied. In war we are one people. In making peace we are one people. In all commercial regulations we are one people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects, is the government of the Union. America has chosen to be in many respects, and to many purposes, a nation; and for these purposes her government is competent. The people have declared, that in the exercise of all the powers given for these objects, it is supreme. It can then in effecting these objects legitimately control all individuals or governments within the American territory. *Cohens v. Virginia*, 6 Wheat., 264, 413.

"The United States is not only a government, but it is a National government, and the only government, in this country, that has the character of nationality. It

is invested with power over all the foreign relations of the country, war, peace and negotiations and intercourse with other nations, all which are forbidden to the State governments." *Knox v. Lee*, 12 Wall., 457, 555. And as an incident of sovereignty it can exclude aliens from the country; and by act of Congress can abrogate a treaty with a foreign power. *The Chinese Exclusion Case*, 130 U. S., 581.

Nature of the Union.—"The union of the States never was a purely arbitrary and artificial relation. It began among the Colonies and grew out of common origin, mutual sympathies, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, character and sanction from the Articles of Confederation. By these the Union was solemnly declared to 'be perpetual.' And when these relations were found to be inadequate to the exigencies of the country, the Constitution was ordained, 'to form a more perfect union.'" *Texas v. White*, 7 Wall., 725.

"Within its legitimate sphere, Congress is supreme, and beyond the control of the courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings must, annul its encroachments upon the reserved power

of the States and the people." U. S. v. Reese, 92 U. S., 221.

"The Constitution in all its provisions looks to an indestructible union of indestructible States. There was no place for reconsideration or revocation except through revolution or through dissent of the States." Texas v. White, 7 Wall., 700, 725, 726.

The case of Texas v. White arose on these facts. The State of Texas at the time of its secession from the Union, held bonds of the United States payable to the State or bearer. The insurgent government sold these bonds, and they were purchased by the defendant in error, White, after they were due. He was charged with notice of defect in the title. The insurgent government could not divest the State of its title; and public property of a State, alienated during the rebellion by a usurping government for the purpose of waging war against the United States, may be reclaimed for the benefit of the State by a restored government, organized in allegiance to the Union.

ARTICLE I.

SECTION 1. "All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

A statute (Act Feb. 28, 1793) attempted to impose upon the judges of the district courts the duty of taking evidence of claimants for pensions, and transmit such proofs and a list of the claimants to the Secretary of War. Some of the judges declined to execute the law, on the ground that the duties imposed were not judicial duties. A change in the law rendered decision of the question by the Supreme Court unnecessary. *Hayburns Case*, 2 Dall., 409 (note). See, *post*, p. 223.

HOUSE OF REPRESENTATIVES.

SECTION 2. "(1) The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

1. Members thus chosen by districts, into which the State may be apportioned, represent the entire State in its sovereign capacity. *McPherson v. Blacker*, 146 U. S., 1.

2. The States in prescribing the qualifications of voters for the numerous branch of their own legislatures, do not do this with reference to the election of members of Congress. Nor can they prescribe the qualifications for voters for members of Congress *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualifications thus furnished as the qualifications of its own electors for members of Congress.

It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State. The right is based fundamentally on the Constitution which created the office of member of Congress and declared it should be elective, and pointed to the means of ascertaining who should be electors. *In re Yarborough*, 110 U. S., 651. 664.

“(2) No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

“(3) Representatives and direct taxes shall be apportioned among the several States which may be included

within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

(4) "The actual enumeration shall be made within three years, after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.

(5) "The number of Representatives shall not exceed one for every thirty thousand; but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

(6) "When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

(7) "The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment."

Decisions as to direct taxes.—(1) The 9th section of Act of July 13th, 1866, relating to the internal

revenue, which provides that "every National banking association, State bank or State banking association shall pay a tax of ten per centum on the amount of notes of any State bank, or State banking association, paid out by them after a certain date (Aug. 1st, 1866) does not lay a direct tax, within the meaning of that clause of the Constitution which ordains that direct taxes shall be apportioned among the several states according to their respective numbers." *Veazie Bank v. Fenno*, 8 Wall., 533. This decision discusses the question, what are "direct taxes," and holds that what was meant in that section of the Constitution, is that where a gross sum as a tax was to be raised from all the States, the amount must be apportioned among the States according to population. Taxes in the nature of excise (like our internal revenue taxes), or on trades or professions, or imposts or duties, are another form of taxation.

(2) *Income tax*, as levied upon insurance companies, laid by Secs. 105 and 126 of Act of June 20th, 1864, as amended by Act of July 13th, 1866 (13 Stat. at L., pp. 276, 283) held not a direct tax but a duty or excise. *Pacific Ins. Co. v. Soule*, 7 Wall., 433.

(3) *Taxes on real estate property are direct taxes.*—*Hylton v. United States*, 3 Dall., 171; *Springer v. United States*, 102 U. S., 586. In the *Hylton* case a

tax was levied on pleasure carriages and was held not a direct tax. In the Springer case the court held that direct taxes meant "only capitation taxes and taxes on real estate." See Cooley's Taxation, p. 5, n. 2; Pom. Const. Law, 157; Sharswood's Blackstone, 308, n.

(4) *Taxes on the rents or income of real estate are direct taxes* within this constitutional provision, and a Federal statute imposing taxes of this nature is void. Pollock v. Farmers' Loan & Trust Co., 157 U. S., 429 (1895); Reheard, 158 U. S., 601.

(5) *Taxes on personal property or the income therefrom are direct taxes*, and the Act of 1894, so far as it falls on income of real or personal property, is repugnant to the Constitution; and the whole act constituting one entire scheme of taxation is void. Pollock v. Farmers' Loan & Trust Co., 158 U. S., 601.

(6) A "*succession*" tax imposed by Acts of June 30th, 1864 (13 Stats. at L., pp. 285-287), as amended by Act of July 13th, 1866 (14 Stats. at L., pp. 140, 141), on every "devolution of title to any real estate," was held not to be a "direct tax," but an "impost or excise" and constitutional and valid. And so, the devise of an equitable interest in real estate is such devolution of title. Scholey v. Rew, 23 Wall., 331.

The taxes upon legacies and distributive shares of personal property, imposed by Act of June, 1898, are im-

posed upon the transmission or receipt of such inheritances, and not upon the right of the State to regulate the devolution of the property upon death. It is not a *direct tax*. Knowlton v. Moore, 179 U. S., —.

(7) *A tax upon the interest on municipal bonds issued by State municipalities is a tax upon the power of the State and its instrumentalities to borrow money, and repugnant to the Constitution.* Pollock v. Farmers' Loan & Trust Co., 157 U. S., 429; 158 id., 601.

(8) *A tax on bank circulation is not a direct tax and may be laid without apportionment.* Veazie Bank v. Fenno, 8 Wall., 533, 546.

THE SENATE.

SECTION 3. “(1) The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

“(2) Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by

resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

“(3) No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State for which he shall be chosen.

“(4) The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

“(5) The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.”

IMPEACHMENT.

“(6) The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

“(7) Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit

under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

ELECTION OF SENATORS.

SECTION 4. "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

(1) In making regulations for the election of Representatives, it is not necessary that Congress should assume entire and exhaustive control. It may make entirely new regulations, or add to or alter or modify those made by the State.

(2) Congress may impose (a) new duties on the officers of election, or (b) additional penalties for breach of duty, or (c) for the perpetration of fraud, or (d) provide for the attendance of officers to prevent frauds and see that the elections are legally and fairly conducted.

(3) There can be no conflict between the power of the State and that of Congress, because the power of Congress is paramount.

(4) An act which authorizes deputy marshals to keep the peace at such elections is not unconstitutional.

(5) Congress can compel State officers to obey State laws regulating the election of Representatives; and when so compelled by the act of Congress, the violation of the State law may be a violation of the Act of Congress.

(6) Congress can vest in the Circuit Court the appointment of supervisors of election. *Ex parte Siebold*, 100 U. S., 374, 382.

(7) This section of Article I, adopts the State qualifications for voting as the Federal qualification for the voter; but the right to vote is based upon the Constitution and not upon the State law, and Congress can pass laws for the free, pure and safe exercise of that right. *Ex parte Yarborough*, 110 U. S., 651.

The right to vote for a member of Congress has its foundation in the Federal Constitution, and a case involving this right where the damages for its denial are laid at \$2,500 may be brought in the Circuit Court of the United States; and may be brought directly therefrom to the Supreme Court. *Wiley v. Sinkler*, 179 U. S., — (decided Oct. 15, 1900).

MEETING OF CONGRESS.

"The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day."

POWER OF SENATE AND HOUSE.

SECTION 5. “(1) Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.”

The courts of a State have no jurisdiction of a complaint for perjury on testifying before a notary public, upon a contested election of a member of the House of Representatives of the United States. Congress has regulated by law the forms, notices and manner of taking depositions in contested election cases, and provided for punishment of perjury in such cases. *In re Loney*, 134 U. S., 372.

“(2) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.”

(1) *The House of Representatives has jurisdiction to punish for contempt*, and the warrant of arrest under the hand and seal of the Speaker, attested by the Clerk, directed to the Sergeant-at-Arms, is legal though it does not show on its face on what evidence it was founded, nor set forth specifically in what the contempt consisted. *Anderson v. Dunn*, 6 Wheat., 204.

(2) *The House may punish its own members for disorderly conduct*, or for failure to attend its sessions, and may fine and imprison contumacious witnesses, but there is no general power vested in either House to punish for contempt. The imprisonment of Kilbourn for refusal to answer questions in an investigation rather judicial than legislative in its nature was a false imprisonment. *Kilbourn v. Thompson*, 103 U. S., 168.

(3) While Congress cannot divest itself, or either of its Houses, of the inherent power to punish for contempt it may provide that contumacy of a witness called to testify before it, shall be a misdemeanor against the United States punishable by the Courts. *In re Chapman*, 166 U. S., 661.

(4) Congress possesses constitutional power to enact a statute to enforce the attendance of witnesses to enable the respective bodies to discharge their legislative functions. *Id.*

(5) *House may count those not voting to determine whether there is a quorum.* The Constitution empowers each House to determine its rules of proceeding. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation taken between the mode or method established of proceeding by rule and the result sought. The rule of the House of Representatives of the 51st Congress that the names of members present who do not vote may be entered on the journal and

counted in determining the presence of a quorum does not infringe any constitutional right and is a valid exercise of the power of the House to determine its own rules. *United States v. Ballin*, 144 U. S., 1.

“(3) Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

“(4) Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.”

COMPENSATION.

SECTION 6. “(1) The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States.”

Compensation of Representatives.—When a person is elected to Congress to fill a vacancy made by unseating a member, who, after having received the proper credentials, having been placed on the roll and drawn his salary, was declared not elected, the succeeding Representative is entitled to compensation only from the time the compensation of the unseated member ceased. *Page v. United States*, 127 U. S., 67.

PRIVILEGE FROM ARREST, ETC.

(2) "They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and (3) for any speech or debate in either House, they shall not be questioned in any other place."

(1) Members of Congress are not exempt from being sued in the District of Columbia while there in attendance upon Congress. *Howard v. Citizens', etc., Co.*, 12 App. D. C., 222.

(2) The exemption extends to service of process without arrest. *Miner v. Markham*, 28 Fed. Rep., 387; *Doty v. Strong*, 1 Pin. (Wis.), 84; *Anderson v. Rountree*, 1 Pin. (Wis.), 115. See *Hoppin v. Jenckes*, 8 R. I., 453; *Danton v. Halstead*, 2 Clark (Pa.), 450; *Prentiss v. Com. Bk.*, 5 Rand., 697; *Lewis v. Femen-dorf*, 2 Johns Cases.

(3) In the following cases it is held that privilege from arrest does not extend to a civil suit. *Gentry v. Griffith*, 27 Tex., 461; *Merrick v. Giddings, McArthur & M.*, 8 Mo., 55; *Catlett v. Morton*, 4 Lit. (Ky.), 122; *Johnson v. Offutt*, 4 Met. (Ky.), 20; *Rhodes v. Walsh*, 58 Minn., 196.

(4) The exemption does not absolve or excuse from obedience to a subpoena in a criminal case. *United States v. Cooper*, 4 Dall. C. Ct., 341.

(5) Where a member of Congress, who had been sur-

rendered by his bail, claimed discharge on ground of privilege, and it was proposed by the counsel for the bail, that they should remain responsible for surrendering him four days after the session, the court approved the compromise as a good precedent. *Coxe v. McClinechan*, 3 Dall., 478.

DISABILITY TO HOLD OTHER OFFICES.

(3) "No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office."

REVENUE BILLS.

SECTION 7. "(1) All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills."

"This provision," says Story, "beyond all question is borrowed from the British House of Commons, of which it is the ancient and indisputable privilege and right that all grants of subsidies and parliamentary aids shall begin in their house." The general reason is that the supplies are raised upon the body of the people; but Blackstone points out that a large part of the taxed property is owned by the Lords. The true reason seems to be that the Lords are a permanent body

created by the pleasure of the king, and the Commons are chosen by the people. There seems less reason for the distinction here, and, indeed, the provision is virtually evaded, as by amendment of any revenue bill, the Senate may "originate" new methods of raising revenue, and entirely change by substitution the methods of the lower House for methods of their own. In England the Lords can refuse to pass but cannot alter or amend. What are bills for raising revenue? This is confined only to bills for the levy of taxes in the strict sense of the word. They do not include those for establishing the post office and mint or others which incidentally bring in revenue. Story on Const., Secs. 874-880.

The debates in the Constitutional Convention show that the word "Revenue Bill" was to be used only in this limited sense. The clause as originally introduced included appropriations; but this, after careful debate, was stricken out. Tucker's Const., pp. 446-467.

APPROVAL OR VETO OF BILLS, ETC.

"(2) Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If af-

ter such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

“(3) Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.”

Neither the Constitution nor any act of Congress imposes upon the President the duty of affixing a date to his signature to a bill. *Gardner v. The Collector*, 6 Wall., 499, 506.

THE POWER OF CONGRESS—DUTIES AND IMPOSTS.

SECTION 8. "The Congress shall have power (1) to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States;

(2) "But all duties, imposts, and excises shall be uniform throughout the United States."

(1) The question arose under this power upon the statute of 1794 (1 U. S. Stats. at L., 373) by which Congress laid a tax upon carriages for the conveyance of persons. The country was then poor. The owners of carriages, a small number comparatively, were compelled to pay quite an onerous tax on these articles of luxury. *Hylton* was, as appears, a manufacturer of carriages and had 125 for sale. A tax was levied on them. The case came before the Supreme Court on the question whether the tax was direct tax or a duty. The court agreed that it was *not a direct tax*. *Hylton v. U. S.*, 3 Dallas, 171.

(2) The case of *McCulloch v. State of Maryland*, 4 Wheat., 316, is one of the most important decisions made by the Supreme Court. The Congress had established and chartered the United States Bank. This was the object of much opposition of a political character. The bank had established a branch bank in Maryland, where it was doing business under its Federal charter. Many denied the power of Congress to

grant such a charter. The Maryland legislature passed a law taxing heavily the circulation of all banks and branches thereof doing business in the State, and chartered otherwise than by State authority. The suit was brought by the State to recover in debt the penalties imposed. The highest court of Maryland decided the State law valid, and the case came on writ of error from that court to the Supreme Court. The tax imposed was so onerous that the evident intent of the law was to drive the branch bank out of the State. The great turning point in the argument of this case was whether the Congress had the power to charter such a bank. The Chief Justice's opinion, in which all the court concurred, is one of the great leading cases on Constitutional law. It lays down the doctrine of implied powers of the government derived from the power to levy and collect taxes, borrow money, etc. The argument or reasoning of the opinion may be stated thus:

(a) The government is not a creature of the State, but of the people.

(b) Its general powers include those of levying taxes, borrowing money, etc., etc.

(c) To exercise these powers it may establish a fiscal system, select its own agencies, and to carry out these powers it derives from the Constitution all incidental powers necessary, in the judgment of Congress, for that purpose.

(d) A bank is a proper agency to carry out the powers of the government in its fiscal policy. It is a means

appropriate and plainly adapted and not inconsistent with the letter and spirit of the Constitution; and Congress may charter such a bank.

(3) The power of Congress to levy taxes is not confined to the State, but is co-extensive with the territory of the United States.

(4) But the State can tax the real property of a United States bank in common with other real property of the bank.

(5) The bank and its issues of currency being a necessary and proper agency of the Federal government, the State legislatures can not tax them for the power to tax is the power to destroy by burdensome or exhaustive taxation. If the State can tax at all it can tax out of existence. If it can tax one agency of the Federal government it can tax another, and thus cripple the general government by destroying its agencies and means of exercising its powers.

(6) The State law, therefore, which taxed the circulation of the branch of the United States bank was unconstitutional and void.

This decision more effectually than any other single decision established the Federal government, put an end to the State rights opinions then too prevalent that the States could thwart and cripple, under pretence of co-ordinate sovereignty, the sovereign power of the United States. It is followed in *Osborn v. U. S. Bank*, 9 Wheat., 738.

Then followed the decision that stock issued for

loans to the government of the United States is not liable to taxation by a State or by municipal authority, under State law. All resting on the principle of *McCulloch v. Maryland*, that the states could not tax the agencies or instrumentalities by which the Federal government derived their revenues. *Weston v. Charleston*, 2 Peters, 449.

After the Civil War had strained to the utmost the resources of the nation and compelled it to issue *United States treasury notes*, or "greenbacks," it was decided that they could not be taxed by State authority. If a man at time of assessment of taxes, had \$100,000 in U. S. treasury notes, they could not be taxed, for the power to tax implies the power to destroy, and a hostile State might have taxed them so heavily as to destroy their value and impair their efficacy as a circulating medium. *Mitchell v. Leavensworth Co.*, 91 U. S., 206. In this case, the plaintiff converted his bank balance into treasury notes on the day as of which assessment was made. He filed a bill to restrain the collection of the tax, but as his conduct was inequitable equity refused to aid him.

On the same principle *certificates of indebtedness* issued by the United States can not be taxed by the States. *The Banks v. The Mayor*, 7 Wall., 16, 26.

The United States was obliged to issue vast amounts of bonds to carry on the war for the Union. It was desired that people of capital should take these bonds

and lend their money to the government. The policy was to enlist to the support of the government the capital of the country, as well as its patriotic sentiment. The bonds thus taken and held by holders resident in the United States were in a series of decisions held to be exempt from State taxation. *Society for Savings v. Coite*, 6 Wall., 594; *New York v. Com'rs of Taxes*, 3 Black, 620; "Bank Tax Case," 2 Wall., 200; *Provident Ins. v. Mass.*, 6 Wall., 611. The Supreme Court went further and held that capital stock of a corporation, if that stock consisted in public securities, was exempt. *Prov. Ins. v. Mass.*, 6 Wall., 611. Thus, where an insurance corporation had as its capital stock a large block of United States bonds, though it could not tax the bonds as bonds, the State undertook to tax them as capital stock, thus doing indirectly what it was forbidden to do directly. The Supreme Court of the United States upheld the public credit in what might be termed the judicial war to uphold the Union against the loyal States. They insisted on the right to tax the property represented by the obligations of the government in various forms owed to its citizens. The Supreme Court denied this power as repugnant to the powers of the general government, for if the right to tax exists at all it is a right "that acknowledges no limits." It is the power to take all as well as a part. We shall consider later the subject of the National Banks, and the cases that arose under the law creating and regulating them. See *post*, p. 36.

The uniformity required by the Constitution (Art. I, Sec. 8) is not an intrinsic uniformity relating to the inherent character of the tax as respects its operation in individuals, but is merely a geographical uniformity. It means that the same plan and method must be operative throughout the United States. *Knowlton v. Moore*, 179 U. S., —.

Right of States to tax salaries of the officers of the United States, etc.—The question arose quite early whether an officer of the United States could be taxed for his salary. The Supreme Court held that, when a State law acts upon the instruments, emoluments, and persons, which the United States may use and employ, it is repugnant to the Constitution of the United States, which is the supreme law of the land. *Dobbins v. Erie Co.*, 16 Pet., 435.

Officers may distrain and sell property to collect taxes.—In the exercise of its power "to levy and collect taxes, duties, imposts and excises," Congress may, to enforce payment of taxes so levied, authorize the distraint and sale of either real or personal property. This is not depriving the owner of his property without due process of law. *Springer v. U. S.*, 102 U. S., 586. In this case A's lands were levied on and sold because he would not pay his income tax, he having no leviable goods the marshal could find, the officer sold his entire lots including homestead. *Held*, That the sale was regular, though by a State law the homestead would be sold separately and last.

Tax on distiller's output construed and upheld as excise tax and constitutional. U. S. v. Singer, 15 Wall., 111.

Tax on foreign-held bonds.—A railroad company of Pennsylvania issued a large amount of bonds. They were held largely in foreign countries. The State legislature thought it an easy way to raise State revenue to tax the bonds and require the railroad treasurer to pay into the State treasury 5 per cent. of the interest which accrued on these bonds. In the case of R. R. Co. v. Penn., 15 Wall., 300, it was held that this law was void. The indebtedness owned by the railroad company was not property in the State of Pennsylvania. The property was where the bond was held. By a divided court the tax was held invalid. It impaired the obligation of the contract, and the real point is that it attempts to tax within a State property that is beyond its borders and outside of its jurisdiction.

The United States can tax in such cases.—But while the power was denied to the States to tax the interest on railroad bonds, the United States can impose such taxes. U. S. v. R. R. Co., 17 Wall., 322.

The States can tax the property of a railroad company chartered by the United States; but it can not tax its operations. R. R. Co. v. Peniston, 18 Wall., 5.

Taxing railroads, and their franchises.—Congress can make contracts with individuals, or corporations, for services to the government, and may exempt in

discretion the agencies employed in such service from State taxation which will impede the performance of the service; but in the absence of positive legislation prohibiting such taxation States may tax the property of such class in such service. *Thomson v. R. R. Co.*, 9 Wall., 579. This case involved the taxation by State authority of the Union Pacific and other railroads and by the United States.

Taxing the notes of State banks.—The Act of July 13, 1866 (14 Stat. at L., 146), required every National bank, State bank or State banking association to pay a tax of 10 per cent. on all notes of State banks paid out by it. This law was intended to drive State bank notes out of circulation and force the bankers to organize as National banks, or at least give National banks and U. S. Treasury notes the whole field of circulation. It was held, as before noted, that this was a legitimate mode of Federal taxation and not a direct tax. *Veazie Bank v. Fenno*, 8 Wall., 533. This case arose in this way. The bank paid out State bank notes. On these the Federal authorities assessed the 10 per cent. tax and were about to make a distraint to collect. The bank paid under protest and then sued to get back the money, on the claim that the law imposing the tax was unconstitutional.

Tax on salaries of State officers.—In the stress of the war Congress taxed everything it could “lay hands on.” One statute (June 30, 1864, 13 Stat. at L., 281)

provided a tax upon gains, profits and income of every person, residing in the United States, whether derived from any kind of property, rents, interests, dividends or salaries or from any profession, trade or employment. The tax was 5 per cent. on all over \$1,000. Judge Day paid the tax under protest and sued to collect or to recover back the money. The Supreme Court held that it was incompetent to levy a tax upon a judicial officer of a State. The case followed *Dobbins v. Erie Co.*, 16 Pet., 435, and held that it was not within the power of Congress to cripple the State governments by taxing salaries; because, if so, Congress could take all the salaries and thus break down the State administration. *Collector v. Day*, 11 Wall., 113.

State taxation of franchises granted by Congress.—A statute of California provided for taxing the property and also the franchise of the railroad companies, which had been conferred by the United States. The court held that the taxing of franchises conferred by the United States was repugnant to the Constitution and void. *California v. R. R. Co.*, 127 U. S., 1.

License tax cases.—An interesting question arose, when the Act of June 30, 1864 (13 Stats. at L., 223) required retail liquor dealers to pay a license tax to the United States, as a means of raising revenue. Penalties were imposed for failure to take out such license. This law was questioned as imposing a tax and granting a license to do things which the State laws had in

some of the States forbidden. It was held, however, by the Supreme Court that:

(1) Where the State laws permitted such sale of liquors (and lottery tickets) the United States could impose a special tax.

(2) Where the States did not permit such sales, the Federal law could not override the State law, by levying such tax and that paying such Federal tax did not legalize the business.

(3) The power of the Federal government to tax a licensed business, does not impair the power of the State to control and regulate any business wholly within its boundaries. *License Tax Cases*, 5 Wall., 462.

(4) A man indicted for selling liquor contrary to State law can not plead as a bar that he had paid a license tax to the government. *Id.*

(5) That States may regulate or forbid the sale of intoxicating liquors within their respective borders. *Pervear v. Com. of Mass.*, 5 Wall., 475.

Regulation of pilots and pilotage.—The State of Pennsylvania passed a law regulating pilots and pilotage, requiring every vessel arriving from or bound to any foreign port or place to receive a pilot, pay fees therefor, under penalty, and to pay half pilot fees to a society for the relief of old and decayed pilots, etc.

This law was held not void, as the grant of power to

regulate commerce did not prevent the State from regulating pilots. Such State regulations may be made, without conflict with the power of Congress, where Congress has not prescribed otherwise. *Cooley v. Wardens of Port of Philadelphia*, 12 How., 299. See *post*, p. 51.

POWER TO BORROW MONEY.

The Congress shall have power, * * *

"To borrow money on the credit of the United States."

NOTES.—"This power," says Story, "seems indispensable to the sovereignty and existence of a National government." Story on Const., 5th Ed., Sec. 1054.

Federal decisions bearing on the power to borrow money.—(1) This power to borrow money is entirely beyond the interference, legislation and dominion of the States. Hence, the State can not tax the security by which the debt is evidenced. *Bank Tax Cases*, 2 Wall., 200. It was here held that a law levying a tax on the valuation of the capital stock paid in, when that stock or property consisted in stocks of the United States, is void. The granting of this power is incompatible with any restraining or controlling power; and the declaration of supremacy in the Constitution is a declaration that no such restraining or controlling

power exists. A tax on stock of the United States held by an individual citizen of a State is a tax upon the power to borrow money on the credit of the United States and can not be levied by a State. *Weston v. City Council*, 2 Pet., 449.

(2) In issuing the bonds of the Federal government they were "exempt from taxation by or under State authority." (Act June 3, 1864.) But the act providing National currency and for National banks, provided that the shares of stock in such bank might be taxed by the States (See R. S., U. S., Sec. 5219) under certain limitations. The statute of New York (Mar. 9, 1865) attempted to tax the shares of National banks, where it provided no taxation on the shares of stock in State banks. This was held void as it taxed the shares of stock in National banks differently from what other bank shares were taxed. This was repugnant to the 41st section of the National banking law which provided that the tax imposed under the laws of any State upon such shares "shall not exceed the rate imposed upon the shares in any of the banks organized under the authority of the State, where such association is located." *Van Allen v. Assessors*, 3 Wall., 573.

(3) The State of New York then tried to adapt its laws to harmonize with the Federal law so as to tax National bank shares "but not at greater rate than is assessed upon other moneyed capital in the hands of individuals in this State." The majority opinion of the

Supreme Court held this law to be valid. *People v. Commissioners*, 4 Wall., 244.

The tax on the shares of the stockholders is not the same thing as the tax upon the capital of a bank. Where a State law taxes the shares in a National bank but does not tax the shares but the capital of State banks the law is void. Affirming *Van Allen v. Assessors*, 3 Wall., 573; *Bradley v. People*, 4 Wall., 459.

(4) *Certificates of indebtedness* issued by the government for supplies, can not be taxed by States; such taxation is an interference with the power to borrow money, etc. *Banks v. Mayor*, 7 Wall., 16.

(5) United States treasury notes are obligations of the government and can not be taxed by the States. *Banks v. Supervisors*, 7 Wall., 27.

Power of Congress to make the Treasury notes legal tender.—It was held in *Hepburn v. Griswold*, 8 Wall., 603 (decided in 1869), that the legal tender acts passed during the war, were unconstitutional. This opinion was given by Chief Justice Chase, the man who as Secretary of the Treasury had brought forward the legal tender scheme. But this decision threatened such dire disaster to the business interests of the country that, after the personnel of the court had been changed by death and new appointments, the question was raised again and solemnly argued in 1870; and it was held in *Knox v. Lee* (*Legal Tender Cases*), 12 Wall., 467, that the legal tender acts were constitutional; and applied

to contracts made before their passage as well as after. In this opinion the Court lay much stress on its being a "war power," as if justified only by the dire necessities of the nation's struggle for its life. But later in *Juilliard v. Greenman*, 110 U. S., 421, it was held that this power to make United States Legal Tender Notes legal tender for private debts could be constitutionally exercised as well in time of peace as of war. These decisions have been much criticised by many of the ablest lawyers; but it is not likely that the court will ever oscillate back to the other and earlier view.

Tax on telegraph messages.—No State can impose a tax upon telegraph messages sent into or out of the State, or upon the receipts therefrom, nor on a gross amount which includes such receipts, as this is a regulation of commerce. *Western Union Telegraph Company v. Alabama*, 132 U. S., 472.

REGULATION OF COMMERCE.

The Congress shall have power, * * *

"To regulate commerce with foreign nations, and among the several States."

"This power is vital to the prosperity of the Union; and without it the government would scarcely deserve the name of a National government. It would stand

as a mere shadow of sovereignty, to mock our hopes and involve us in a common ruin." Story on Const., 5 Ed., sec. 1057.

What is meant by commerce?—This term means traffic; but it is something more; it is intercourse. It comprehends navigation, and the laws regulating navigation are founded on the power to regulate commerce. *Gibbons v. Ogden*, 9 Wheat., 189.

The great leading case on this subject is *Gibbons v. Ogden*, 9 Wheat., 189. The facts out of which the case arose are these: The legislature of New York granted to Livingston and Fulton the exclusive navigation of all of the waters within the jurisdiction of that State, with boats propelled by fire or steam, for a term of years, and authorized the Chancellor to restrain by injunction any person from navigating those waters with such boats. Livingston and Fulton assigned to Ogden their right to navigate the waters between places in New Jersey and the city of New York. Gibbons had two steamers and ran on the lines granted to Ogden by Livingston and Fulton. The Chancellor enjoined Gibbons from this violation of Ogden's exclusive right. From the decision affirming the Chancellor's decision, by the Court of Errors of New York (17 Johns., 486) Gibbons carried the case by writ of error to the Supreme Court of the United States. Here was a clear question raised,—the power to regulate commerce by the State as against the power to regulate commerce by the Con-

gress. The Court held: (1) That the power to regulate commerce was exclusive of any concurrent power in the State, when Congress exercised its power, however, it might be as to the State regulations in the absence of actual exercise of the power by Congress. (2) That such power of Congress does not stop at the external boundary of a State. (3) That the law of New York granting this exclusive right was inoperative as against the laws of the United States; and that the New York Chancellor could not enjoin Gibbons from plying his vessels.

Commerce includes an *intercourse of persons* as well as merchandise. Passenger Cases, 7 How., 283.

The power to regulate commerce with foreign nations.—What is meant by “regulate”? The power to regulate is the power to prescribe the rule by which commerce is governed. Gibbons v. Ogden, 9 Wheat., 196. It is to prescribe the conditions on which it shall be conducted. Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196. It includes navigation, and the power to pass navigation laws (Gibbons v. Ogden, 9 Wheat., 190, 191) both on the ocean and within the limits of every State, so far as it is commerce among the States or with the Indian tribes (Id., 1), and control of all navigable waters in a State which are accessible from any other State. Gilman v. Philadelphia, 3 Wall., 713. Cooley v. Board of Wardens, 12 How., 292, 315, 316.

It comprehends the power to impose an embargo. *Gibbons v. Ogden*, 9 Wheat., 191, 192.

Passenger cases. Right of the State to regulate head money.—The statute of New York, which imposed a penalty upon the master of a vessel arriving from a foreign port, who neglected to report to the mayor or recorder an account of his passengers, giving names, ages, place of birth, last legal settlement and occupation was held not a regulation of commerce, but a police regulation, and not contrary to the Federal Constitution. *City of New York v. Miln*, 11 Pet., 102.

A statute of New York, which required the masters of vessels to pay a certain sum to a State officer, on account of every passenger brought from a foreign country into the State or before landing any alien passengers is void. It interferes with commerce and intercourse. *Passenger Cases*, 7 How., 286. The decision in the case of *New York City v. Miln*, 11 Pet., 102, to the effect that the States might regulate commerce *where the Congress had not acted upon the matter* was regarded as a dangerous doctrine. Judge Story strongly dissented and expressed grave fears at the tendency of the Court, under its changed personality, to overturn the work of Marshall and his associates. But in the *Passenger Cases*, 7 How., 283, the ground was by a majority of the Court abandoned. The Court in later decisions held that the regulation of foreign and

interstate commerce is exclusively within the control of Congress and that no State can attempt a regulation of such commerce, even though there be no law of Congress with which it might conflict. *Wabash, etc., Co. v. Illinois*, 118 U. S., 557; *Fargo v. Michigan*, 121 U. S., 230. The doctrine of these cases (7 How., 283) has been affirmed in *Crandall v. Nevada*, 6 Wall., 40; *State Tonnage Tax Cases*, 12 Wall., 213; *Ward v. Maryland*, 12 Wall., 163; *State Freight Tax Cases*, 15 Wall., 275; *Morgan v. Parham*, 16 Wall., 475; *Henderson v. New York*, 92 U. S., 269; *Railroad Co. v. Husen*, 95 U. S., 465; *Hall v. DeCuir*, 95 U. S., 516; *Cook v. Pennsylvania*, 97 U. S., 571; *Telegraph Co. v. Texas*, 105 U. S., 465; *People v. Compagnie Gen. Transatlantique*, 107 U. S., 59; *Walling v. Mich.*, 116 U. S., 455; *Robbins v. Shelby Taxing Dist.*, 120 U. S., 493; *Bowman v. Chicago, etc., Ry. Co.*, 125 U. S., 492; *Leisy v. Hardin*, 135 U. S., 147. These cases are all cited in these notes and the point of each given. See also Notes to U. S. Reports, Vol. 4, p. 709, *et seq.*

1. The case of *City of New York v. Miln*, 11 Pet., 102, decided no more than that the requirement that a master of a vessel should furnish a catalogue of the passengers, with a description of names, ages, occupations and places of birth and last legal settlement was a police regulation.

2. But the imposition of a tax on each passenger landed is not such a police regulation, but an invasion of the power of Congress to regulate commerce.

3. Where the State law imposes an almost impossible condition on the ship master as a prerequisite to landing passengers, with the alternative of paying a small sum of money for each one of them, this is a regulation of commerce which the State has no power to make, whatever it may be called.

4. Nor does it help the State law that the penalty it imposes does not accrue until 24 hours after the arrival of the vessel. *Passenger Cases*, 7 How., 286.

The power of Congress extends to acts done on land which interfere with or obstruct commerce or navigation with foreign nations and among the States, and it may pass laws punishing theft of goods belonging to vessels in distress, though the goods may be above high water mark on the land. 4 Stat. at L., 116. *Held*, a valid law in *United States v. Combs*, 12 Pet., 72.

The power to regulate commerce granted to Congress is not confined to the instrumentalities known and used at the time of its adoption, but keeps pace with the progress of the country and the new developments. The Act of Florida, 1866, granting to the Pensacola Telegraph Co. exclusive right to maintain lines of electric telegraph is in conflict with the Act of Congress, July 24, 1866 (14 Stat., 221, R. S., sec. 5263, *et seq.*), entitled, "An act to aid in construction of Telegraph Lines and secure to the government the use of the same for postal, military and other purposes," and is void. It also conflicts with the power of

Congress to establish post roads. *Pensacola Telegraph Co. v. Western Union Tel. Co.*, 96 U. S., 1.

Congress may regulate immigration.—The act which imposes upon owners of vessels, who shall bring passengers, not citizens of this country, a duty for each passenger is a valid act. *Head Money Cases*, 112 U. S., 580.

Powers of Congress over commerce.—In executing the power to regulate commerce Congress may employ as instrumentalities, corporations created by it or by the States and may sanction the taking of private property for the use of such corporation for right of way. *Cherokee Nation v. So. Kans. R'y*, 135 U. S., 641.

While Congress may contract with individuals and corporations for services to the government; may grant aids by money or land, etc., and exempt from State taxation, when Congress deems it necessary, the mere fact that a corporation deriving its existence from State law, exercising its franchises under such law and holding its property within State jurisdiction and under State protection, does not exempt it from taxation, unless Congress so declares. *Thompson v. Pac. Railroad*, 9 Wall., 579.

Interstate commerce by sea is of a national character, and within the exclusive power of Congress. *Phila., etc., Co. v. Penn.*, 122 U. S., 326.

Where its power is exclusive, the failure of Congress to make express regulations is an indication of its will

that the subject shall be free from restrictions. *Id.*; *Leisy v. Harden*, 135 U. S., 100; *Robbins v. Shelby Co. Taxing District*, 120 U. S., 489.

Interstate commerce can not be taxed at all by a State, even though the same amount of tax should be laid on domestic commerce, or that solely carried on within the State. *Robbins v. Shelby Co. Taxing Dist.*, 120 U. S., 489.

Congress passed a law (9 Stat. at L., 440) that no bill of sale, mortgage, hypothecation or conveyance of a vessel of the United States, or any part of such vessel, should be valid unless recorded in the office of the Collector of Customs where registered. *Held*, a valid act. *White's Bank v. Smith*, 7 Wall., 646.

In the absence of any regulation by Congress, the State may establish and regulate works of a local character affecting more or less interstate commerce, such as wharfage rates and regulations. *Ouachita, etc., Co. v. Aiken*, 121 U. S., 444.

State tax on commercial agents or agencies; when void.—An act of Pennsylvania (May 20, 1853, and Apr. 9, 1859) required every auctioneer to collect and pay into the treasury of the State a tax on his sales. This act, so far as it applied to sales of imported goods in the original package, by the auctioneer sold for the importer, is in conflict with sections 8 and 9 of Art. I, of the Constitution of the United States, and it

lays a duty on imports and is a regulation of commerce. *Cook v. Pennsylvania*, 97 U. S., 566.

A tax imposed by a State upon an occupation, which tax necessarily discriminates against the introduction and sale of the products of another State, or against the citizens of another State, is repugnant to the Constitution. So held where an agent employed in the business of soliciting orders for liquors to be shipped into the State from places without it, was taxed in such business at a higher rate than those soliciting for goods, etc., to be sold within the State. This is a restraint upon commerce between the States. *Walling v. Michigan*, 116 U. S., 446.

A Tennessee law required that "All drummers and all persons not having a regular licensed house of business in the taxing district offering for sale or selling goods by sample to pay \$10 per week or \$25 per month for such privilege," violates the constitutional provision as to regulation of commerce, so far as it affects interstate trade. *Robbins v. Shelby Taxing Dist.*, 120 U. S., 489. A similar Maryland statute held void. *Corson v. Maryland*, 120 U. S., 502.

A State law exacting a license tax to enable a person within the State to solicit orders and make sales for a person residing in another State is repugnant to the commerce regulation clause of the Federal Constitution. *Asher v. Texas*, 128 U. S., 129.

A license imposed by California upon an agency es-

tablished in San Francisco, by a railroad company, to induce passengers to take that company's route to New York, is unconstitutional as a tax upon interstate commerce, and void. *McCall v. Cal.*, 136 U. S., 104.

The act of the legislature of Kentucky which provides that the agent of an express company not incorporated by the laws of that State must first obtain license and satisfy the auditor as to the capital of the company he represents, is a regulation of interstate commerce and so far void. *Crutcher v. Kentucky*, 141 U. S., 47.

An ordinance requiring agents soliciting orders on behalf of manufacturers of goods to take out a license and pay a tax therefor, under authority conferred by a statute granting such power to the municipal corporation, is an exercise of the taxing power, and not the police power, and when enforced against an agent sent by a manufacturer in another State to solicit orders for the products of his manufactory it imposes a tax upon interstate commerce, in violation of the provisions of the Constitution. *Brennan v. Titusville*, 153 U. S., 289.

A municipal ordinance of New Orleans to establish a rate of license for professions, callings and other business attempted to charge and collect a license tax on persons owning and running tow-boats to and from the Gulf of Mexico and the city of New Orleans. *Held*, a regulation of commerce, and infringing the Constitu-

tion of the United States. *Moran v. New Orleans*, 112 U. S., 69.

The license tax imposed on companies doing business in Florida applies, as construed by the Supreme Court of that State, to business within the State, and not to interstate business, and is valid. *Osborne v. Florida*, 164 U. S., 650.

A State license tax on factors, brokers, buyers or sellers on commission, held to affect interstate commerce so remotely as not to amount to a regulation of commerce. *Ficklen v. Shelby Co. Taxing Dist.*, 145 U. S., 1.

The railroad company made a contract with an elevator company that the latter in consideration of building an elevator should have for a prescribed term all grain brought by its cars to Dubuque, on the Mississippi river, to be transmitted to a place beyond. Subsequently a bridge lawfully built across the river for railroad use made the elevator storage a useless expense, but it still continued binding and the railroad company could not claim that it was an interference with interstate commerce. *R. R. Co. v. Richmond*, 19 Wall., 584.

State restrictions upon foreign commerce, navigation, or immigration, how far void.—A state tax upon passengers, whether citizens or foreigners, entering a port of that State is void. *People v. Comp. Gen. Transatlantique*, 107 U. S., 59.

A statute of a State that masters and wardens of a port within it should be entitled to demand and receive, in addition to other fees, the sum of \$5.00 for every vessel arriving in port is a regulation of commerce, and void. *Steamship Co. v. Portwardens*, 6 Wall., 31 (1867).

The legislature passed a law in 1869 making it unlawful for any other than the master and wardens or their deputies of the port of New Orleans to make survey of the hatches of sea-going vessels or to make surveys of damaged goods coming on board such vessel. *Held*, void, being a regulation of commerce with foreign nations. *Foster v. Master, etc., Port of New Orleans*, 94 U. S., 246.

An act of Alabama (1854) compelling registration of steamboat owners, their place of business, etc., under penalty, is a regulation of commerce, and void. *Sinnot v. Mobile*, 22 How., 227.

Original packages of imported goods.—A State law requiring an importer of foreign articles to take a license from State authority and pay a sum therefor into the State treasury or to any State official or other local authority is in violation of clause giving power to Congress to regulate commerce, and also the clause which prohibits the States from laying any imposts, etc. *Brown v. Maryland*, 12 Wheat., 419. This leading case is followed and cited in numerous subsequent decisions. It defines an impost or duty to be custom or

tax laid on articles brought into a country. Imports are articles brought into a country. A duty on imports is a duty upon the article itself and not the act of importation. It is the first "original package" case. The rule was applied in *Low v. Austin*, 13 Wall., 29; *Cook v. Pennsylvania*, 97 U. S., 573; *Bowman v. Chicago*, 125 U. S., 506. This subject is further annotated under another clause. See *post*, p. 70.

Original packages of imported goods, which can not be assessed for local taxation, consist of the boxes, cases or bales, in which they were shipped; not the smaller packages therein contained, although these are the packages in which the goods are put up by the manufacturer; and when the packages in which the goods are shipped reach their destination for use or trade and the box or case is opened for the sale and delivery of the distinct parcels contained in it, each parcel loses its distinctive character as an import and becomes property subject to taxation in the State, the same as other property. *F. May & Co. v. New Orleans*, 178 U. S., 496.

An assessment for taxation of goods in the original packages in which they were imported, before they have, by the act of the importer, become incorporated with the mass of property of the State, is void as a violation of the 8th and 10th sections of Art. I of the Constitution, prohibiting the States to lay imposts or duties on imports, and giving Congress power to regulate for

oreign commerce. *F. May & Co. v. New Orleans*, 178 U. S., 496.

Power of Congress, how far exclusive.—The grant of the commercial power to Congress does not expressly exclude the States from exercising authority. If they are excluded it is (1) because the nature of the power is such that the grant of power to Congress requires that a similar power should not exist in the States, or (2) because Congress has so exercised the power that state exercise would be incompatible. *Cooley v. Wardens of Philadelphia*, 12 How., 299. (3) When the subjects on which it is exercised are national in character and require uniformity, the power of Congress is exclusive. (4) When the subjects are local in their nature or operate or constitute aids to commerce, the State may provide for their proper regulation and management until Congress acts and supersedes State action. *Cardwell v. Am. Bridge Co.*, 113 U. S., 205; *Ferry Co. v. Penn.*, 114 U. S., 196; *Brown v. Houston*, 114 U. S., 622. (5) When a law of a state imposes a license tax on boats under such circumstances and with such effect as to amount to a regulation of commerce it is void on that account. *Moran v. New Orleans*, 112 U. S., 69. (6) When a pilot is licensed under the laws of the United States, the State law can not compel a vessel having such a pilot to take a State pilot under R. S., sec. 4237, which enacts that no State shall make any regulations which shall make any discrimin-

ation in the trade of pilotage or half-pilotage between vessels sailing between the ports of different States. *Sprague v. Thompson*, 118 U. S., 90.

The power to regulate between the States includes a control of the electric telegraph as an agency of commerce. *Pensacola Tel. Co. v. W. U. Tel. Co.*, 96 U. S., 1; *W. U. Tel. Co. v. Texas*, 105 U. S., 460. The Act of Congress of July 24, 1866, giving telegraph companies the right to run their lines along post roads, etc., on accepting certain terms prescribed by R. S., Secs. 5263-9, makes each company an agent of the government, so far as its business is concerned. *Id.* A State law, requiring the delivery of interstate messages to addressees, one mile distant from the office, is void. *W. U. Tel. Co. v. Pendleton*, 122 U. S., 347.

State legislation which would impose a direct burden upon interstate commerce or interfere with its freedom by direct means, encroaches upon the exclusive power of Congress. *Hall v. De Cuir*, 95 U. S., 485.

The power of Congress over commerce is in no wise restricted by State authority. *Pembina, etc., Co. v. Pennsylvania*, 125 U. S., 181.

INSTANCES OF CONSTITUTIONAL STATE TAXATION OF CORPORATE FRANCHISES, PROPERTY, GROSS RECEIPTS, ETC., USED IN INTERSTATE COMMERCE.

The constitutional limitation of the power of Congress over commerce, "to regulate commerce among

the several States," etc., necessarily excludes from Federal control all that commerce which is carried on entirely within the limits of a State, and does not affect or extend to other States. But a steamer employed in transporting goods on Grand river, in Michigan, destined for other States, and goods brought from outside the State destined to places in the State was engaged in commerce between the States and subject to Congressional regulation. *The Daniel Ball*, 10 Wall., 557.

Taxation on gross earnings within State, held legal in Dakota, act of 1883. *McHenry v. Alford*, 168 U. S., 651.

A State law requiring an annual tax to be paid for privilege of exercising its franchises determined by the proportion which its gross receipts in the State bear to the whole receipts, to be ascertained as the statute requires, is valid. *Maine v. Grand Trunk R'y Co.*, 142 U. S., 217.

Taxation on basis of proportional value of franchise, etc.—The statute of Massachusetts (Pub. St., c. 13, Secs. 40, 43) requiring a telegraph company owning a line of telegraph within the State to pay to the State Treasurer a tax upon its corporate franchises at a valuation equal to the aggregate value of the shares in its capital stock, deducting such portion of that valuation as is proportional to the length of its lines without the State, and deducting also an amount equal to the value of its

real estate and machinery subject to local taxation within the State, is valid, as applied to a telegraph company incorporated by another State, and which had accepted the rights conferred by Congress by Sec. 5263, R. S. U. S. Mass. v. West. Un. Tel. Co., 141 U. S., 40.

Although the transportation of the subjects of interstate commerce or the receipts therefrom, or the occupation or business of carrying it on can not directly be subjected to State taxation, yet property belonging to corporations or companies engaged in such commerce may be taxed by States; and whatever the form of the exaction, if it is essentially only property taxation, it will not fall within the inhibition of the Constitution. Adams Ex. Co. v. Ohio State Auditor, 165 U. S., 194. In this case the property of the company within the State was taxed, and in fixing its value it was assessed proportionately to the value of the entire property of the express company, the proportion being fairly ascertained. Unity of use is an element of value, the same as in estimating value of a railway property in several States.

A State statute imposing a tax on the capital stock of all corporations engaged in the transportation of freight and passengers, within such State, under which a corporation of another State engaged in running railroad cars into, through and out of such State and having at all times a large number of such cars in the State, taxed by taking as the basis of assessment such

proportion of its capital stock as the number of miles of railroad in the State bear to the whole number of miles over which the cars are run, does not as applied to such a corporation, conflict with the commerce clause of the Constitution. *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S., 18; *Same v. Hayward*, id., 36.

The statute of a State (Indiana, Laws, 1893, c. 171) required a telegraph company to pay a tax upon its property within the State valued at such a proportion of the whole value of its capital stock as the length of its lines within the State bears to its lines every where, deducting a sum equal to the value of the real estate, held valid. *West. Un. Tel. Co. v. Taggart*, 163 U. S., 1.

A State privilege tax on each mile of wire within the State, imposed on all telegraph companies therein in lieu of other taxes, being a tax on property and not on interstate commerce, is valid. *Tel., etc., Co. v. Adams*, 155 U. S., 688.

A city ordinance imposing a license on business done by a telegraph company exclusively in the city, and excluding business done for the government and to and from points outside of the State, is an exercise of the police power, not an interference with interstate commerce. *Postal Tel. Co. v. Charleston*, 153 U. S., 692.

Tax upon corporate franchises.—The statute of New York, requiring every corporation, joint-stock company, or association organized under the laws of that

State or other States or countries doing business in that State, except banks, etc., to pay a tax upon its franchise or business annually, as construed by the highest Court in that State is held not repugnant to the Federal Constitution. *New York v. Roberts*, 171 U. S., 658.

A tax on franchises of a foreign mining corporation, etc., to be ascertained upon a percentage of its whole capital stock, ascertained as the statute prescribes, held valid. *Horn Silver Mining Co. v. New York*, 143 U. S., 305.

An act of New York fixing rate of elevator charges, held valid. *Budd v. New York*, 143 U. S., 517, adhering to *Munn v. Illinois*, 94 U. S., 113, and explaining *Chic., etc., R'y Co. v. Minnesota*, 134 U. S., 418.

A corporation created by one State can exercise its corporate functions in another State only by the comity of the latter, and may be taxed for the privilege of doing business therein. *Ins. Co. v. Mass.*, 10 Wall., 566.

A stipulation in a charter that the company shall pay the State granting the charter a bonus of some of its earnings is not an interference with interstate commerce; nor is it the imposition of a tax or impost on the same, nor a discrimination against the citizens of other States. *R. R. Co. v. Maryland*, 21 Wall., 456. ♦

Internal commerce is under State control, and to encourage the growth of such commerce of the State, it may provide for deepening channels, removing

obstructions, regulate the water flow, and improve them in other ways, and levy a general tax or toll upon those who use the streams to meet the cost of such improvement, providing the free navigation of the waters, as permitted under and by the laws of the United States, is not impaired, and provided, also, that any system for the improvement of their navigation, adopted by the general government, is not defeated. *Sands v. Manistee Riv. Imp. Co.*, 123 U. S., 288.

INSTANCES OF UNCONSTITUTIONAL STATE LAWS, WHICH
INTERFERE WITH INTERSTATE COMMERCE.

Unconstitutional taxation of interstate commerce or of the receipts therefrom or instrumentalities thereof.

(a) State tax on gross receipts of railroads for business in interstate commerce, void. Michigan levied a tax on the gross receipts of railroads for the carriage of freights and passengers into, out of, or through the State. *Held*, a tax on interstate commerce and therefore void. *Fargo v. Michigan*, 121 U. S., 231.

(b) A state tax on gross receipts of a railroad company is not repugnant to the Constitution of the United States, even though such gross receipts are made up in part from freights received from interstate commerce. The court distinguishes between a tax on the freight and a tax on the fruits of such carriage

after it has been commingled with other property. *State Tax on Railway Gross Receipts*, 15 Wall., 284.

(c) A State tax upon the gross receipts of steamship company incorporated under the laws, which receipts are derived from the transportation of persons and property by sea between different States and to foreign countries is void, as a regulation of interstate and foreign commerce. *Philadelphia, etc., Steamship Co. v. Pennsylvania*, 122 U. S., 326.

(d) Special tax on railroad and stage companies for every passenger carried out of the State, is a tax on travel from State to State, and as a regulation of commerce void when Congress has acted on the subject. 6 Wall., 35. And is void as an obstruction to citizens traveling, etc., and doing business for the United States. *Crandall v. Nevada*, 6 Wall., 35.

(e) A railroad, which as a link of a through line running into other States, is engaged in interstate commerce and a tax imposed for the privilege of keeping an office in the State for the use of its officers, etc., is a tax upon commerce among the States and as such repugnant to the Constitution. *Norfolk & Western R'y Co. v. Pennsylvania*, 136 U. S., 114.

(f) A law of Illinois was held void as operating to affect the rates for interstate transportation. *Wabash, etc., R'y Co. v. Illinois*, 118 U. S., 557. This statute attempted to make the charges for "long hauls" and "short hauls" proportionate to the distance of the haul,

and, as construed by the Illinois court, it applied to transportation beyond the State. Thus construed it applied to and interfered with interstate commerce. It also applied the same rule to passenger rates.

(g) *Sleeping car tax*.—The legislature of Tennessee passed in 1877 a law which imposed a privilege tax of \$50 per annum on every sleeping car used or run over a railroad in Tennessee, not owned by the railroad on which it is run or used. This was held void so far as it applied to interstate transportation of passengers. *Pickard v. Pullman So. Car Co.*, 117 U. S., 34.

Taxation of railroads and other transportation companies by the State.—Various attempts have been made by the States to tax railroad and other transportation companies. The State of Pennsylvania in 1864 attempted to impose a tax upon freight taken up within and carried out of the State, or taken without and brought within it. The highest court of the State sustained this tax. The Supreme Court of the United States sent its writ of error to the State court, and reversed this decision, holding that transportation of freight is a constitutional part of commerce, and that a State tax upon freights transported from State to State is an attempted tax on commerce itself. Whenever the transportation of freight or passengers is taxed by States it can only be as to levies on business entirely within the States. *State Freight Tax Case*, 15 Wall., 232.

The same principle was early established in *Crandall v. Nevada*, 6 Wall., 35. Nevada sought to tax specially stage companies, etc., for every passenger carried out of the State by stage or railroad. The Supreme Court held this act void. So in *Fargo v. Michigan*, 121 U. S., 230, a State law of Michigan "went by the board." It was not a tax upon business, but disguise it as they would, it was but a tax upon commerce among the States.

A statute of Illinois attempted to enact that railroad companies should be liable to a penalty for transporting freight or passengers at the same or a greater sum for any distance than they charged for a longer distance. This was held invalid so far as it applied to interstate transportation, though valid as to internal commerce. *Wabash, etc., Co. v. Illinois*, 118 U. S., 557.

The Texas statute of May 6, 1882, making it unlawful for a railroad company in that State to charge and collect a greater sum for transportation of freight than is specified in the bill of lading, is, when applied to freight transported into the State from without it, in conflict with the interstate commerce act, and not applicable to interstate shipments. *Gulf, etc., Ry. Co. v. Hefley*, 158 U. S., 98.

The statute of Mississippi, requiring all railroads carrying passengers in that State (other than street railways) to provide equal but separate accommodations for the white and colored races, does not violate

the Federal Constitution, having been construed by the Supreme Court of the State to apply solely to commerce within the State, does no violence to the commerce clause of the Constitution. *Louisville, etc., R'y v. Mississippi*, 133 U. S., 587.

Taxation of telegraph companies.—The State legislatures, eager to compel foreign corporations doing business within their respective jurisdictions to bear the burden of running the government, have in several instances tried to tax telegraph companies on the messages they sent. The case came to the Supreme Court first, on the question whether a telegraph line is an instrumentality of commerce. The State of Florida undertook to give to the Pensacola Telegraph Co. an exclusive right to maintain telegraph lines in that State. The Congress in 1866 passed a law allowing telegraph companies to operate lines on any military or post roads or over any of the public domain. The Pensacola Company undertook to enjoin the Western Union from running lines in that State in competition with their exclusive franchise granted by the State. The case came to the Supreme Court, and it was there decided (1) That the power of Congress to regulate commerce with foreign nations and among the several States and to establish post offices and post roads was not confined to the old instrumentalities of commerce known or used when the Constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the

new developments of time and circumstances; (2) That the power to regulate commerce was legitimately exercised in extending privileges of the act of 1866 to telegraph companies; (3) That the law of Florida, as it tended to obstruct and hinder this commerce between the States, was inoperative as against a company which had complied with the Act of Congress, 1866 (R. S., U. S., Sec. 5263, *et seq.*), and obtained the right to establish its lines along railways and over military and post roads, from private owners. *Pensacola Tel. Co. v. W. U. Tel. Co.*, 96 U. S., 1. See *ante*, p. 51.

This decision fixed the telegraph line as an instrumentality of interstate commerce. *Id.*

Then followed the case of *Telegraph Company v. Texas*, 105 U. S., 460, which held that a tax attempted to be imposed by State law, on telegraph messages sent out of Texas, was an illegal interference by the State with interstate commerce, and the law levying it was void as repugnant to the Constitution.

It remained for the State of Ohio to attempt to impose a tax on telegraph companies in another way. By an act of the legislature a State tax was levied upon all receipts of a telegraph company. As these included receipts from interstate business the law was held to that extent void. *Ratterman v. W. U. Tel. Co.*, 127 U. S., 411.

The State of Alabama undertook by State law to empower a municipal corporation to impose a license tax

on a telegraph company, and a penalty for not paying it. The agent of the Western Union Telegraph Company was sued for this penalty, as he was instructed to refuse to pay the tax. The case came on writ of error to the Supreme Court of the United States and in 1887 was decided. The Court followed the line of decisions already indicated. This general license tax operating on all its business ran counter to the power of Congress "to regulate commerce," and as it affected its entire business it was held a void tax. *Leloup v. Mobile*, 127 U. S., 641.

In *Western Union Telegraph Company v. Attorney General*, 125 U. S., 530, the State of Massachusetts had a law which required corporations and, among others, telegraph companies to pay certain taxes; and required the attorney general to bring suit to enjoin them from doing business, when in arrear of such taxes. The telegraph company was taxed on its lines operating in that State, the value of which was to be ascertained by comparing the same with the length of the entire lines. The Supreme Court held this act valid as to tax, but void as to the power to enjoin. The Supreme Court carefully distinguishes between the right of the State to tax property within its borders even of a corporation engaged in interstate commerce and the right to tax that commerce.

But in *St. Louis v. W. U. Tel. Co.*, 148 U. S., 92 (decided in 1893), the city of St. Louis, by power de-

rived from its charter, passed an ordinance compelling the telegraph companies to pay an annual tax of \$5.00 on every pole "for the privilege of using the streets, alleys and public places." This was held not to be a license tax but a charge in the nature of a rental and not repugnant to the Constitution.

A statute of a State which requires a telegraph company to pay a tax upon its property within the State, valued at such a proportion of the whole value of its capital stock, as the length of its lines within the State bears to its entire length of lines everywhere, deducting therefrom the value of its real estate and machinery subject to local taxation within the State, is valid, notwithstanding it does not in terms direct a deduction from the valuation, either for the value of its franchises from the United States, or for the value of its real estate, and machinery situated and taxed in other States. So held as to an Indiana statute of 1891, which, as construed by the Supreme Court of that State, makes it the duty of the tax-commissioners to make deductions, on account of the greater proportional value of the company's property outside the State or for any other reason, so as to assess the property within the State at its true cash value. So construed the act is constitutional. *West. Un. Tel. Co. v. Taggart*, 163 U. S., 1. See *ante*, p. 52.

A city ordinance, passed pursuant to State law, re-

quired a telegraph company (which had accepted the provisions of the Act of July 24, 1866, c. 230, 14 Stats., 221), to pay a license tax upon business done exclusively within the city, not including any business done to or from points outside the State, or business done for the government of the United States or its officers, is a valid exercise of police power and not an interference with interstate commerce. *Postal Tel. Co. v. Charleston*, 153 U. S., 692.

Property sent from one State to another, on its arrival there is then subject to taxation, and subject to the general taxes imposed upon property in that State. *Brown v. Houston*, 114 U. S., 622.

Where goods were imported and a contract for the purchase of cargoes of foreign merchandise before or after the arrival of the vessel in the bay of Mobile (which is a part of the port of Mobile and included in it), where by the terms of the contract the goods are not to be at the risk of the purchaser until delivered to him in said bay, do not constitute the purchaser an "importer," and the goods so purchased and sold by him though in original packages, may be property subjected to taxation by the State. *Waring v. Mayor*, 8 Wall., 110.

Where a railroad within a State is taxed on its gross receipts for tolls and transportation, and among such tolls are rentals paid to it by another company engaged in interstate transportation, the law imposing

such tax is valid. *N. Y., etc., R'y v. Pennsylvania*, 158 U. S., 431. In the case of *Telegraph Co. v. Adams*, 155 U. S., 688, the statute of Mississippi imposed a tax against telegraph companies organized under the laws of other States, according to the miles of wire within the State, in lieu of taxes directly levied on the property. This act did not put an unconstitutional restraint upon commerce, nor interfere with it.

A stipulation in the charter of a railroad company, that it shall pay to the State a bonus or portion of its earnings is not repugnant to the Constitution of the United States. *B. & O. R. R. Co. v. Maryland*, 21 Wall., 456.

A company was chartered by Georgia to do a general forwarding and express business. It had an office in Mobile and there had an express business extending beyond the limits of Alabama and under the contract so to do. An ordinance of Mobile required a license tax to be paid by such a company. *Held*, not repugnant to the Constitution. *Osborne v. Mobile*, 16 Wall., 479.

A tax on account of transportation from one point to another in the same State though passing during transit through part of another State is not a tax upon interstate commerce, and is valid. *Lehigh Valley R'y v. Pennsylvania*, 145 U. S., 192.

Railway gross receipts taxable.—A statute of a State imposing a tax upon the gross receipts of a railroad company is not a tax on imports or exports nor a regula-

tion of interstate commerce, nor a tax upon interstate transportation. "State Tax on Railway Gross Receipts," 15 Wall., 284.

A State statute which levies a tax upon the gross receipts of railroads for the carriage of freight and passengers into, out of, or through the State is a tax upon commerce and therefore void. *Fargo v. Michigan*, 121 U. S., 230. The State may tax the money actually within the State, after it has passed beyond the stage of compensation for carrying persons or property, as it may tax other money or property within its limits; but a tax specifically upon receipts for carriage of freights and passengers into, out of, or through the State is a tax upon the commerce out of which it arises, and void. *Id.*

A State can not under the guise of taxing business within its borders impose a burden upon commerce among the States. *Id.*

A State tax upon the gross receipts of a steamship company incorporated under its laws, which receipts are derived from the transportation of persons and property by sea, between different States, and to and from foreign countries, amounts to a regulation of interstate and foreign commerce and is void. *Phila., etc., Steamship Co. v. Penna.*, 122 U. S., 326.

A State tax upon freight, transported from one State to another, is a regulation of commerce among the

States, and void. *State Freight Tax Case*, 15 Wall., 232.

Right of States to regulate or prohibit the sale of intoxicating liquors.—A license tax by the State upon dealers in beer and ale by the cask, which was not manufactured in the city imposing such tax, was held not in conflict with either the clause as to regulating commerce or that protecting the privileges or immunities of citizens of the several States. *Downham v. Alexandria Council*, 10 Wall., 173.

The right to sell intoxicating liquors is not one of the privileges and immunities of citizens that States have no power to abridge. *Bartemeyer v. Iowa*, 18 Wall., 129.

The provisions of the statute of Connecticut, leaving the sale of liquors, etc., to County Commissioners do not conflict with the 14th Amendment. *Gray v. Connecticut*, 159 U. S., 74.

A State law imposing a tax of 50 cents a gallon on all spirituous liquors brought into the State is constitutional where a like tax is imposed on liquors manufactured in the State. *Hinson v. Lott*, 8 Wall., 148. But this is qualified by the rule that the State law must not interfere with the right to sell imported liquor in the original cask or package. *Thurlow v. Mass.*, 5 How., 504.

The power of regulation of the sale of liquor in a State is subject to State Constitution and statutes. Gi-

ozza v. Tiernan, 148 U. S., 657; Kidd v. Pearson, 128 U. S., 1.

No one has an inherent right to sell intoxicating liquors at retail. Crowley v. Christensen, 137 U. S., 86.

A State law prohibiting the manufacture of intoxicating liquors within its limits to be there sold for general use as a beverage violates no right, privilege, or immunity secured by the United States Constitution. *Id.*

A corporation incorporated as the Boston Beer company in 1828, by act of the legislature of Massachusetts, was given certain powers and privileges of manufacturing corporations granted by an act (1809). That act was repealed in 1829. But it contained a proviso that the legislature might from time to time, on due notice, make further provision and regulations for the management of business of the corporation, or wholly to repeal any act, or part thereof, establishing a corporation. The act of 1869 prohibited the sale of intoxicating and certain malt liquors. *Held*, (1) That the provisions of the act of 1809, touching the power reserved by the legislature, were adopted in the charter, and part of the contract between the State and the Company.

(2) That the contract was not affected by the repeal of the act of 1809.

(3) Under the company's charter it had no more rights than individuals had to manufacture and sell malt liquors.

(4) The State can prohibit the sale of such liquors under the police power. The doctrine of *Bartemeyer v. Iowa*, 18 Wall., 129, reaffirmed. *Beer Co. v. Mass.*, 97 U. S., 25.

A statute prohibiting the manufacture of intoxicating liquors is not invalid as a regulation of commerce because it does not except from its operation liquors manufactured for export. *Kidd v. Pearson*, 128 U. S., 1.

The provisions in the legislation of the State of Texas, respecting the taxation of persons engaged in the sale of spirituous, vinous or malt liquors or medicated bitters do not violate the Federal Constitution. *Giozza v. Tiernan*, 148 U. S., 657.

The ordinary legislation of a State regulating or prohibiting the sale of intoxicating liquors is not repugnant to the Constitution. *Foster v. Kansas*, 112 U. S., 205; *Bartemeyer v. Iowa*, 18 Wall., 129.

The mode of prohibition is wholly within the discretion of the State legislatures. *Carney v. Iowa*, 5 Wall., 480; *Thurlow v. Mass.*, 5 How., 504.

A special license imposed by a city for the privilege of selling beer is not invalid. *Downham v. Alexandria*, 10 Wall., 173.

The license under an act of Congress imposed under the excise or revenue law of the United States, does not give the right to keep or sell liquors in violation of the State laws, and is no defense to an indictment un-

der State law. *McGuire v. Mass.*, 3 Wall., 387; *License Tax Cases*, 5 Wall., 462, 480.

Original package cases.—A statute of a State prohibiting the sale of any intoxicating liquors except for pharmaceutical, medical, chemical, or sacramental purposes, etc., as applied to a sale by the importer and in the original package or kegs, unbroken and unopened, if such liquors manufactured and brought in from another State, is unconstitutional and void, as repugnant to the commerce clause of the Federal Constitution. *Leisy v. Hardin*, 135 U. S., 100, followed in *Lyng v. Mich.*, id., 161.

The act of August 8, 1896 (26 Stat., 315, c. 728), which enacts that "all fermented, distilled or other intoxicating liquors or liquors transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted under its police powers, and shall not be exempt therefrom by reason of being introduced in original packages or otherwise," is valid. *In re Rahrer*, 140 U. S., 545.

But retrospective operation is not given to the act. *Id.* Nor was it necessary to re-enact the State law after the passage of that Act of Congress. *Id.*

The South Carolina Dispensary law.—The "Dispensary law of South Carolina" held invalid. It recognized liquors as commodities which might be bought

and sold, and therefore must be deemed to be the subject of foreign and interstate commerce, and obstructs and interferes with it, and to that extent stands condemned. *Scott v. Donald*, 165 U. S., 58.

INSTANCES WHERE STATE LAWS ARE VALID EXERCISE OF
POLICE POWERS, THOUGH REMOTELY OR INCIDENT-
ALLY AFFECTING COMMERCE.

1. *Wharfage may be charged by a city* which owns and maintains improved wharves at its own expense. This is not an interference with the power of Congress to regulate commerce. *Packet Co. v. Keokuk*, 95 U. S., 80; *Packet Co. v. St. Louis*, 100 U. S., 423; *Ouachita Packet Co. v. Aiken*, 121 U. S., 444.

Acts of States regulating pilotage are in view of acts of Congress recognizing and adopting them, to be deemed constitutionally made till Congress supersedes them by its own acts. *Ex parte McNiel*, 13 Wall., 236.

The pilot laws of New York held not to conflict with the Constitution of the United States. *Ex parte McNiel*, 13 Wall., 236, and *Cooley v. Wardens, etc.*, 12 How., 299, reaffirmed. *Wilson v. McNamee*, 102 U. S., 572.

The statute of Minnesota requiring railway companies to fence their roads is a police regulation and does not deny equal protection of the laws. *Minneapolis, etc., R'y v. Emmons*, 149 U. S., 364.

Fee for filing articles of consolidation, amounting to a percentage on the entire authorized stock, is not a tax on interstate commerce. *Ashley v. Ryan*, 153 U. S., 436.

Grain elevators—States may regulate charges.—1. The business of elevating grain is one charged with a public interest, analogous to that of common carriers, and it may be regulated and rates for elevating and storing fixed by State laws for the public good. *Budd v. New York*, 143 U. S., 517.

2. And this is so, notwithstanding such elevators are used as instruments by those engaged in interstate commerce, and until Congress acts in relation to these interstate relations such State regulations can be enforced, even though they may indirectly operate upon commerce beyond the State jurisdiction. *Munn v. Illinois*, 94 U. S., 113.

3. Owners of elevators are not deprived of the equal protection of the laws by such regulations (*Brass v. Stoeser*, 153 U. S., 391), nor, of property without due process of law (*Budd v. New York*, 143 U. S., 517), at least where the charges are not shown to be unreasonable. (*Id.*) See *post*, pp. 338, 353.

4. One who engages in the business of elevating and storing grain of other people for profit is subject to such statutory regulations although his *main purpose* in maintaining the elevator is to store his own grain in carrying on his own business of buying and shipping for sale; and the statute may require him to store for

others at the fixed rate when there is room to receive it. *Brass v. Stoeser*, 153 U. S., 391.

5. As to reasonableness of charges, see *post*, p. 338.

Running of trains on Sunday.—State may forbid it, and though a needless intrusion on commerce it is within the exercise of State police power. *Hennington v. Georgia*, 163 U. S., 299.

Requiring railway trains to stop at stations.—A statute of Illinois (R. S., 1889, c. 114, Sec. 88) required *all* regular trains of railroad corporations to stop at stations of county seats a sufficient length of time to receive and let off passengers. The Supreme Court of the State construed it as requiring the fast mail trains of the companies to make such stops. *Held*, that it was an unconstitutional hindrance and obstruction of interstate commerce and the passage of the mails of the United States.

The requirement of the Illinois statute that all regular passenger trains must stop at county seats, is a direct burden on interstate commerce, so far as it requires interstate passenger trains to stop at such stations. *Cleveland, etc., R'y Co. v. Illinois*, 177 U. S., 514. But such requirement may be made as to trains running wholly within the state. *Gladson v. Minnesota*, 166 U. S., 427.

And a statute may require three of the regular trains, if so many are run daily, to stop at stations in cities or villages containing a specified population. *Lake*

Shore, etc., Ry. Co. v. Ohio, 173 U. S., 285. Such regulation need not necessarily burden interstate commerce. *Id.*

Speed of trains in cities.—A regulation of the speed of railroad trains within the limits of a city is not an unconstitutional interference with interstate commerce. *Erb v. Morasch*, 177 U. S., 584.

States may impose conditions on which foreign corporations may do business in the State.—The imposition of conditions on which foreign insurance companies may do business in a State are not provisions relating to interstate commerce. *Hooper v. California*, 155 U. S., 648; *Doyle v. Continental Ins. Co.*, 94 U. S., 535.

A State may impose terms on which a foreign corporation shall carry on business in its territory. *Bank v. Earle*, 13 Pet., 579; *Paul v. Virginia*, 8 Wall., 168; *Ducat v. Chicago*, 10 Wall., 410.

“But when it imposes limitations upon the power of the non-resident corporation to make contracts for carrying on commerce between the States, it violates the Constitution.” *Cooper Mfg. Co. v. Ferguson*, 113 U. S., 727.

The statute of Iowa of 1862 enacted that all railroads operating lines in that State should fix their rates per mile for passengers or freights, etc. The Congress passed a law June 15, 1866 (15 Stat. at L., 66), declared that every railroad company in the United

States was authorized to carry upon and over its road, boats, bridges, etc., all passengers, troops, government supplies, mails, freight and property on their way from one State to another, and to receive compensation therefor. The railroad company contended that the State law was in conflict with the Act of Congress. *Held*, that the State law was valid, being but a police regulation. *R. R. Co. v. Fuller*, 17 Wall., 560.

The statute of Missouri (R. S., 89, Sec. 944), provided that whenever any property is received by a common carrier to be transported from one place to another, within or without the State, it shall be liable for *any loss caused by its own negligence or the negligence of any other carrier, etc.*, having been construed by the Supreme Court of that State as not restricting the right of a carrier to limit its liability to the end of its own road, is valid. *Missouri, etc., R'y v. McCann*, 174 U. S., 580.

A statute of Iowa Code (1873, Sec. 1308) provided that "no contract, receipt, rule or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carriers of passengers, which would have existed had no contract, receipt, rule or regulation been made or entered into." *Held*, that as applied to an injury happening within the State, it does not contravene the Constitution as a regulation of commerce. *Mil. & St. P. R'y v. Solan*, 169 U. S., 133.

The legislature of Delaware, in an act incorporating a railroad company, required the company to pay annually one-fourth of 1 per cent. tax on the capital stock. This did not prevent a subsequent legislature from imposing a further tax, but was simply a declaration of the rate payable till a further rate was fixed. Later, the company consolidated with a company whose line ran into another State, by virtue of acts passed in three States. Afterwards, the State imposed a further tax of one-fourth of 1 per cent., on the cash value of each share of stock, but where the company's line was partly in another State, the company should pay only in proportion as the length of the road in Delaware bore to the whole length of the road. This was held not to conflict with the Constitution of the United States. *Delaware v. R. R. Tax Case*, 18 Wall., 206.

An act of a State legislature establishing a commission with power to classify and regulate rates of fare and freight on railroads is valid, being the creation of a board administrative in nature to carry out the will of the State. *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S., 362.

A statute of California required that the Commissioner of Immigration, a State officer, should satisfy himself that any passengers coming into that State were not "paupers, idiots, etc., or lewd or debauched women." He was to charge 75 cents for every passenger examined and collect it of the shipmaster, or

the vessel by attachment. *Held*, that the act went beyond the necessities of protecting the State from criminal, diseased or immoral foreigners; that such power existed in the State but could not be so exercised as to invade the right of Congress to regulate commerce with foreign nations. *Chy Lung v. Freeman*, 92 U. S., 275.

A State statute requiring locomotive engineers to be licensed after examination as to competency is not a regulation of interstate commerce, but a valid exercise of the police power. *Smith v. Alabama*, 124 U. S., 465. A fee charged therefor is not a tax upon transportation. *Id.*

The State may legislate as to duties, qualifications and liability of employes, to secure against accidents, as to require of engineers an examination for color blindness. *Nashville, etc., Ry. v. Alabama*, 128 U. S., 96.

The Iowa Code, Sec. 4059, making owner of Texas cattle liable for damages suffered by allowing them to run at large, is valid exercise of police power. *Kim-mish v. Ball*, 129 U. S., 217.

Laws of a State forbidding the killing of woodcocks, ruffed grouse, or quail for the purpose of conveying the same beyond the State, or the transportation of the same, do not infringe the Federal Constitution. The reason on which this rests is that wild animals are the property of the State. It can allow them to be killed or for-

bid it. When caught or killed lawfully the property vests in the one who catches or kills. But the State may impose conditions that only a limited or qualified property shall pass from the State to the captor. A condition that the game, fish, etc., shall not be used outside the State is one that the State may impose. *Geer v. Connecticut*, 161 U. S., 533.

Insurance not commerce.—The business of *fire* insurance is not interstate commerce (*Paul v. Virginia*, 8 Wall., 168; *Liverpool, etc., Ins. Co. v. Mass.*, 10 Wall., 566; *Phila., etc., Ass'n v. New York*, 119 U. S., 110); nor is *marine* insurance (*Hooper v. California*, 155 U. S., 648); nor is *life* insurance. *New York Life Ins. Co. v. Cravens*, 178 U. S., 389.

The business of life insurance is not commerce. A State may require a foreign insurance company to make its policies non-forfeitable for non-payment of premiums, as a condition of doing business in the State, or may refuse to admit it if so inclined. *New York Life Ins. Co. v. Cravens*, 178 U. S., 389, citing *Paul v. Virginia*, 8 Wall., 168; *Hooper v. California*, 155 U. S., 648; *Daggs v. Orient Ins. Co.*, 172 U. S., 557; *Ins. Co. v. Morse*, 20 Wall., 450; *Doyle v. Ins. Co.*, 94 U. S., 535.

State inspection laws, when void.—Minnesota passed a statute providing for inspection of all cattle, sheep and swine designed for slaughter for human food. Its terms were so framed as to exclude from the State all

fresh beef, veal, mutton, lamb, or pork taken from animals slaughtered in other States; and it was held void as it burdened interstate commerce. *Minnesota v. Barber*, 136 U. S., 314. It can not stand as a rightful exercise of the police power.

The Act of Virginia of Feb. 18, 1890, declares it to be unlawful to offer for sale, within the limits of the State, any beef, veal, or mutton from animals slaughtered more than 100 miles from the place where offered for sale, unless previously inspected and approved by local inspectors appointed under that act. The inspector was to be paid one cent a pound for inspection. This operated to discriminate against such meats produced in other States, as was its intent, and was held void as a restraint upon commerce among the States. *Brimmer v. Rebman*, 138 U. S., 78.

An act of Virginia, requiring the inspection of all flour brought into the State and offered for sale, held repugnant to the commerce clause. *Voight v. Wright*, 141 U. S., 62.

The act of North Carolina providing for inspection of fertilizers to prevent imposition, held not in collision with the power of Congress over commerce. *Patapsco Guano Co. v. North Carolina*, 171 U. S., 345.

A statute of Maryland providing for the inspection of tobacco, and forbidding it to be carried out of the State except in hogsheads inspected and marked and a certain charge allowed for inspection or "outage," be-

ing merely an inspection duty was held valid. *Turner v. Maryland*, 107 U. S., 38.

A statute of Georgia requiring every telegraph company, with a line of wires wholly or partly within the State, to send or deliver the dispatches with diligence, under penalty, does not interfere with interstate commerce. *West. U. Tel. Co. v. James*, 162 U. S., 650.

Quarantine laws, when valid.—A requirement that each vessel passing a quarantine station shall pay a fee, fixed by the statute, for examination of her sanitary condition, is a part of all quarantine systems and is not a tax on tonnage, etc., and not repugnant to the Federal Constitution. *Morgan v. Louisiana*, 93 U. S., 217. The State may so regulate till Congress covers the same ground or forbids such regulation.

A State can not in order to pay or defray the expenses of her quarantine regulations impose a tonnage tax on vessels owned in foreign ports and entering her harbors in pursuit of commerce. *Peete v. Morgan*, 19 Wall., 581.

Congress has adopted State quarantine laws. They do not interfere with commerce; and though they amount to a regulation of commerce, they are valid till Congress otherwise enacts. *Morgan's Steamship Co. v. Louisiana*, 118 U. S., 455. The State may charge a fee for examination as to her sanitary condition. This is not a tonnage tax. *Id.*

The statute of Missouri, which prohibits driving or

carrying Texas, Mexican or Indian cattle into the State during a portion of the year is contrary to the Constitution. It is more than a quarantine regulation and not legitimate exercise of the police power. The State may establish quarantine and reasonable inspection regulations and prevent animals having infectious or contagious diseases from going through or coming into the State; but not by such a sweeping act as the one passed upon. *R. R. Co. v. Hunson*, 95 U. S., 465.

Oleomargarine legislation.—Oleomargarine has for a quarter of a century nearly, been recognized as an article of commerce and as an article of food both in Europe and the United States, and is recognized as such by Congress, in the Act of Aug., 1886, c. 840. Being an article of commerce it can not be wholly excluded from importation into a State from another State where it was manufactured, although the State into which it was imported may so regulate the introduction as to secure purity of quality. *Schollenberger v. Pennsylvania*, 171 U. S., 1. The importer has a right not only to sell personally, but he has the right to employ an agent to sell in the original packages. The right to sell does not depend upon whether the original package was suitable for the retail trade or not, but is the same, whether to consumers or wholesale dealers. *Id.*

A statute of New Hampshire prohibited the sale of oleomargarine as a substitute for butter, unless it is of a pink color. *Held*, invalid. It is plain that if the

State had not the power to absolutely prohibit the sale of an article of commerce like oleomargarine in its pure state, it has no power to provide that such article shall be colored or rather discolored, by adding a foreign substance to it. *Collins v. New Hampshire*, 171 U. S., 30.

The Act of Massachusetts (1891, c. 58) to prevent deception in manufacture and sale of imitation butter, in its application to oleomargarine brought into the State from other States, is not in conflict with the interstate commerce clause of the Constitution. *Plumley v. Massachusetts*, 155 U. S., 461.

The Act of Congress, Aug. 2, 1886, c. 840, imposing a tax upon oleomargarine, does not involve an unconstitutional delegation of power on the Commissioner of Internal Revenue. *In re Kollock*, 165 U. S., 526.

Federal tax on, an excise tax, or revenue.—The passage of the Act of Congress of August 2, 1886, defining butter and imposing a tax upon the sale of oleomargarine was not intended to interfere with any rightful authority of the States, nor was it intended as a regulation of commerce among the States. *Id.*

State laws as to use of oleomargarine do not apply to National Soldiers' Homes.—The State legislatures have no constitutional power to interfere with the management which is provided by Congress for the National Homes for Soldiers, etc., nor with the provisions made by Congress for furnishing food to soldiers; and as to

those matters the officers in charge of such homes are not subject to the State laws or jurisdiction. *Ohio v. Thomas*, 173 U. S., 276.

Anti-trust act.—The Kansas City Live Stock Exchange was an unincorporated voluntary association, doing business at its stock yard situated partly in Missouri and partly in Kansas. The business of the members was to receive indirectly consignments of cattle, hogs and other live stock from owners of the same in those two and other States, to feed such stock and prepare it for market, sell same and pay the owners the proceeds after deducting charges, expenses and advances. The members were in the habit of individually soliciting consignments of stock from the owners and making advances thereon; but the rules of the association forbade them buying from any commission merchant in Kansas City, not a member of the exchange, fixed rate of commission for selling, prohibited employment of agents to solicit consignments except upon a certain salary, prohibited the sending of messages prepaid by telegram or telephone with information as to state of markets, and forbade the members from dealing with persons violating rules and regulations of, or expelled from, the association. *Held*, that these facts did not show a violation of the "anti-trust" Act of 1890, and that they were not engaged in interstate commerce within the meaning of such act. The fact that their yards were partly in two States was without weight;

that the rules and regulations were reasonable and fair, and could not be regarded as a restraint upon commerce among the States. *Hopkins v. United States*, 171 U. S., 578; *Anderson v. United States*, 171 U. S., 604.

Monopolies.—The purchase of the corporate stock of sugar refineries for the purpose of acquiring control over the business of refining sugar for sale in the United States, was held not to involve a monopoly within the anti-trust law of 1890 (26 Stats. at L., 209, c. 647). *United States v. E. C. Knight Co.*, 156 U. S., 1.

Anti-trust law valid.—Under the grant of power to Congress contained in this section (8 of Art. I) to regulate commerce among the several States and with Indian tribes, that body can enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such contract shall be, when carried into effect, directly and not as a mere incident to other innocent purposes, to regulate to any extent interstate or foreign commerce and to violate the anti-trust act. *Addyston Pipe & Street Co. v. United States*, 175 U. S., 211.

Six companies engaged in the business of manufacturing cast-iron pipe entered into a combination and conspiracy among themselves, by which they agreed that there should be no competition between them in any of the States and Territories mentioned in the

agreement (some 36 in all) in regard to the manufacture of cast-iron pipe, with a view to enhance the price of cast-iron pipe dealt in. They were enjoined from maintaining such combination, so far as it related to interstate commerce. It was an agreement in restraint of trade. *Id.*

But the jurisdiction of Congress does not extend over combinations in restraint of trade wholly within a state, nor over that part of a combination that relates wholly to trade within a State. *Id.*

Joint traffic combinations illegal.—A combination of competing railroads, engaged in interstate traffic, was formed, its declared purpose being in part “to co-operate with each other and adjacent transportation associations to establish and maintain reasonable and just rates, fares, rules and regulations on State and interstate traffic, to prevent unjust discrimination and to secure the reduction and concentration of agencies,” and the agreement for which provides for the establishment of joint-traffic agencies by the individual companies, and the securing of, to each road which is a party, an equitable proportion of the competitive traffic. The agreement forbade agencies by the individual companies, except with the approval of the managers of the association and subjected the road violating its provisions or deviating from its rates to a forfeiture of a sum of money. It was held a combination in restraint of

trade, in violation of the anti-trust statute. *United States v. Joint Traffic Ass'n*, 171 U. S., 505.

Power of Federal courts to enjoin interference with or obstructions to interstate commerce.—While the United States government is one of enumerated powers, it has full attributes of sovereignty within the limits of those powers, among which are the power over interstate commerce, and over the transmission of the mails. This power is not dormant; and in its exercise the United States may remove all obstructions to the passage of interstate commerce and may invoke the power of courts to restrain the interposing of such obstructions by injunction. *In re Debs*, 158 U. S., 564. For violation of such injunction the offender may be punished for contempt. *Id.*

Power of Congress over internal navigation.—The power of Congress over commerce comprehends navigation within the limits of every State, so far as it may be connected with commerce with other States or foreign nations or Indian tribes (*Gibbons v. Ogden*, 9 Wheat., 1), and the control of navigable waters accessible from any other State than that in which they be. *Gilman v. Phila.*, 3 Wall., 713.

The whole commercial marine of the country, foreign and interstate, is placed under the regulation of Congress, and its laws relating to foreign or coastwise trade are supreme. *Sinnot v. Mobile, etc.*, 22 How., 227, 244.

The Acts of Congress for the better security of pas-

sengers on steamboats (5 Stat. at L., 304, 626), apply to waters affected by interstate commerce within a State, or between States, or on the coast (*Waring v. Clarke*, 5 How., 441); and acts respecting the licensing and inspection of steamboats have like application. The *Daniel Ball v. United States*, 10 Wall., 557. The Act of Congress exempting ship owners from loss by fire applies on the great inland lakes (Act of Congress, 9 U. S. Stat. at L., 635), excepts vessels used in inland navigation from the operation of this statute. This exception does not apply to the great lakes. They are inland seas, lying between us and a foreign nation. *Moore v. Am. Trans. Co.*, 24 How., 1.

The Chicago river is a navigable stream, subject to the commercial power of Congress (*Escanaba, etc., Co. v. Chicago*, 107 U. S., 678); but such inland waters as Cayuga and Seneca lake in New York having no navigable connection with waters beyond the State are subject to State regulation and not that of Congress. *Moore v. Am. Trans. Co.*, 24 How., 1.

Congress may regulate liability of owners of vessels, though plying between ports of the same State, if they navigate the high seas. *Lord v. Goodall, etc., Co.*, 102 U. S., 541.

The compact between South Carolina and Georgia, made in 1787 that the Savannah river should be the boundary, and the navigation thereof equally free to the citizens of both States, etc., has no effect upon the subse-

quent provision of the Constitution that Congress shall have power to regulate commerce, etc. Congress has the same power over the Savannah river as over other rivers. An appropriation for the improvement of a harbor on a navigable river to be expended under direction of the Secretary of War, gives him discretion to determine the mode. He may divert the water from one channel to the other, and this is not a preference of the ports of one to those of another State. *South Carolina v. Georgia*, 93 U. S., 4.

The Alabama act of 1867, to provide for the improvements of the river and harbor of Mobile, levied expenses on that county to make the improvement. The taxpayers claimed that it was in conflict with the commercial power of Congress. *Held*, not in such conflict. *Mobile Co. v. Kimball*, 102 U. S., 691.

The law of the State of Mississippi, for the improvement of the navigation of that river is not in conflict with the clause which guarantees the free navigation of the river, in the act of Congress for the admission of that State into the Union. *Withers v. Buckley*, 26 How., 84.

A State may authorize a dam across a navigable stream, where Congress has not acted in respect to that matter. The builder of such a dam under State authority is not liable for damages caused thereby. *Pound v. Turk*, 95 U. S., 459.

State power as to internal navigation.—A State law

of Maine gave an individual an exclusive right to navigate the upper waters of the Penobscot above falls which prevented any interstate navigation. *Held*, not in conflict with Federal Constitution. *Veazie v. Moor*, 14 How., 568.

The *Montello* was a steamboat plying the Fox river between Oshkosh and Portage. She was libeled for forfeiture for neglect to take out license under United States laws. *Held*, that this water was then only a navigable water of the State, so far as appeared from the record, and if so, the forfeiture did not result, and the sale was invalid. *The Montello*, 11 Wall., 411.

The State of Alabama passed a law in 1854 that all steamboats engaged in navigating the waters of that State should before leaving the port of Mobile, file in the office of a State official a statement of the names of the owners, their residence, and interest in the vessel. The law imposed a fine for failure to do so. *Held*, invalid, as by the laws of Congress such vessels were enrolled and licensed for the coasting trade. *Sinnot v. Com., etc., of Mobile*, 22 How., 227.

The ordinance of 1787 as to the navigable waters leading into the Mississippi and St. Lawrence rivers, does not prevent a State from improving the navigation of such waters within its limits and charging and collecting reasonable tolls for its compensation for using such artificial improvements from vessels using the same. *Huse v. Glover*, 119 U. S., 543.

Congress may, by general laws, provide a lien to materialmen on vessels for supplies furnished to the vessel in its own port. General maritime law does not afford such a lien. Until Congress provide such a lien, the States may legislate upon the subject and provide such liens. *The Lottowanna*, 21 Wall., 558. See *The General Scott*, 4 Wheat., 438; *Peyroux v. Howard*, 7 Pet., 324; *U. S. v. 35 Chests of Tea*, 12 Wheat., 486; *Norton v. Switzer*, 93 U. S., 355; *Leon v. Galceran*, 11 Wall., 185.

But such liens can only be enforced in the United States Federal courts. *Id.* And as a *discretionary* power, not as a right, which the court is bound to carry into execution. *Meyer v. Tupper*, 1 Black., 522. State legislatures can not create a maritime lien nor confer jurisdiction upon a State court to enforce such lien *in rem*. *The Belfast*, 7 Wall., 624; *Edwards v. Elliott*, 21 Wall., 532.

Liability for marine torts, under State laws.—The statute of Indiana making parties liable for marine torts, resulting in death and giving action to personal representatives for the benefit of certain relatives, does not encroach on the constitutional power to regulate navigable waters. *Sherlock v. Allen*, 93 U. S., 99.

The State may, within its jurisdiction, pass such laws, until Congress takes control of it, as to interstate commerce, though the State law remotely affects commerce. *Id.*

Extent of admiralty jurisdiction.—Admiralty jurisdiction extends to navigable lakes and rivers, without regard to the ebb and flow of the tides of the ocean. *Genesee Chief v. Fitzhugh*, 12 Howard, 443.

Power of Congress with respect to bridges over navigable streams.—The ordinance of 1787, that the navigable rivers leading into the Mississippi and St. Lawrence rivers shall be common highways forever free, without tax, impost or duty, refers to rivers in their natural state. The States through which they may flow may improve them and charge and collect reasonable tolls for use of such improvements from vessels using the same as compensation for the use of the improvements. *Huse v. Glover*, 119 U. S., 543.

Rivers navigable in fact are public navigable rivers in law, and steamboats navigating them are subject to governmental regulation. *The Montello*, 20 Wall., 430.

Congress under power to regulate commerce among the States, may act directly or create a corporation to build a bridge across a navigable stream between two States, and to take private lands for the purpose of making just compensation. *Luxton v. North River Bridge Co.*, 153 U. S., 525.

In the absence of all legislation by Congress, a State has power to authorize a dam to be built across navigable streams, though previously navigable for vessels

enrolled and licensed for the coasting trade. *Wilson v. Blackbird Creek Marsh Company*, 2 Pet., 245.

The State of Virginia authorized a bridge to be built over the Ohio river at Wheeling. The State of Pennsylvania filed a bill in equity in the Supreme Court of the United States to compel the removal of the bridge as a nuisance. *Held*, (1) That the law authorizing the bridge was inoperative; (2) that equity would entertain the bill; (3) that the bridge must be so remodeled as to have "draws" in it to admit of vessels passing. *Wheeling Bridge Case*, 13 How., 518.

This case came before the court a second time (on a motion to enforce the former decree) in 18 How., 421. The former decision was reaffirmed and it was further held:

(1) That Congressional legislation on the subject of such bridges was a valid exercise of the power of regulating commerce between the States.

(2) The power to so regulate commerce includes the power to license and authorize bridges and regulate the manner of construction, etc.

(3) That Congress could authorize the former bridge to stand, though the court had decided it was illegal. Congress had done so.

(4) But such a law could not reach back and render invalid the former decree of the court.

(5) Such law did not affect the plaintiff's right to costs, but

(6) As the law of Congress legalized the bridge, and then it ceased to be a nuisance, the former decree can be no further executed; and the bridge can not be abated. *Id.*

This subject received further exposition in *Gilman v. Philadelphia*, 3 Wall., 713 (1865). Several bridges had been built across the Schuylkill river at Philadelphia under the same rule.

Congress has power to legalize a bridge over a navigable river though otherwise the bridge might be declared a nuisance. *The Clinton Bridge*, 10 Wall., 454; *Newport & Cin. Bridge Co. v. U. S.*, 105 U. S., 470; *Miller v. New York*, 109 U. S., 385.

When Congress declares a bridge over a navigable river an unlawful structure, State legislation can not make it lawful. *Miller v. Mayor, etc., of New York*, 109 U. S., 385.

When Congress grants a license to build such a bridge, it can withdraw it or require alterations to be made in the structure. *Newport, etc., Co. v. U. S.*, 105 U. S., 470.

When Congress declares a bridge lawful and a post road, this does not affect its obligation under its privilege, to maintain draw bridges, over navigable streams. *New Orleans, etc., R. R. v. Mississippi*, 112 U. S., 12.

When an act of Congress enacts that a certain bridge already built over a river which divides two States "shall be a lawful structure" and shall be known and

recognized as a post route, this means that its abutments, piers, and draw superstructure and height shall have the sanction of law, and be maintained and used in that condition. The act is constitutional, though enacted after bridge is built and after suit was ready for hearing praying for injunction against the bridge as a nuisance. *Penn. v. Wheeling Bridge Co.*, 18 How., 421.

The power of States over bridges across navigable streams is plenary until Congress acts upon the subject. *Gilman v. Phila.*, 3 Wall., 713; *Escanaba, etc., Co. v. Chicago*, 107 U. S., 678. The States may authorize the construction of *dams* over navigable streams; and until Congress has taken action, such State action is not repugnant to the Constitution. *Wilson v. Blackbird Creek Marsh Co.*, 2 Pet., 245; *Pound v. Turck*, 95 U. S., 459; *Cardwell v. Am. Bridge Co.*, 113 U. S., 205; *Willamette Bridge Co. v. Hatch*, 125 U. S., 8; *Hamilton v. Vicksburg, etc., Co.*, 119 U. S., 280.

A bridge constructed with a draw can not be regarded as an obstruction to navigation. *Escanaba Co. v. Chicago*, 107 U. S., 678.

When a bridge is lawfully maintained over a navigable river its owner may resort to the courts to protect it. *Texas & P. Ry. v. Interstate Trans. Co.*, 155 U. S., 585.

The State of Kentucky fixed the rate of tolls for crossing a bridge over the Ohio river between Cincin-

nati and the Kentucky shore. *Held*, that the act fixing these tolls was an attempted regulation of interstate commerce and void. *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S., 204.

Ferry rights across navigable rivers between States. The State of Kentucky gave exclusive ferry right from its own shore to opposite side of the river. This right was contested in the Supreme Court. *Held*:

(1) That, though the State of Kentucky could give and protect an exclusive license of ferriage from its own shore, it could not hinder such from Ohio shore.

(2) That a vessel licensed in the coasting trade by the United States can not be denied the right to land at all customary landings in a navigable river.

(3) But such vessel can not be used for mere ferriage across a river. From such the State may exclude it.

(4) Such exclusion is no violation of the right of Congress to regulate commerce between the States. *Conway v. Taylor's Executor*, 1 Black., 603.

The transportation of passengers and freight for hire by a steam ferry across the Delaware river between Pennsylvania and New Jersey, by a corporation of one of the States, is interstate commerce and a State exaction upon it is void. *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196.

The establishment of ferries across navigable rivers or streams is a subject within the control of the govern-

ment, and not a matter of private right (*Mills v. St. Clair Co.*, 8 How., 569), and is reserved to the State (*Conway v. Taylor*, 1 Black., 603), and the power of Congress to require vessels to be enrolled and licensed, derived from the commercial power, does not interfere with the police power of the State in granting ferry licenses. *Wiggins Ferry Co. v. East St. Louis*, 107 U. S., 365; *Fanning v. Gregoire*, 16 How., 524.

A municipal corporation, having by its charter an exclusive right to make and maintain wharves within its limits on a navigable river, can charge and collect wharfage on the basis of tonnage. *Packet Co. v. Keokuk*, 95 U. S., 80.

REGULATION OF COMMERCE WITH INDIAN TRIBES.

The Congress shall have power, * * *

“To regulate commerce * * * with the Indian tribes.”

Commerce or traffic or intercourse carried on with an Indian tribe or member of such tribe is subject to regulation by Congress, though within the limits of a State. *U. S. v. Halliday*, 3 Wall., 407. State legislation can not withdraw such Indians from the influence of the act of Congress. *Id.*

The sale of liquor to Indians can be forbidden by Congress, though the Indian is under State jurisdiction, if he is within charge of an Indian agent, although off

the reservation. *U. S. v. Halliday*, 3 Wall., 407. But it is otherwise where the Indian has been naturalized, or made a citizen and is out of tribal relation. *Id.*

Congress may exclude spirituous liquors from existing Indian country or that ceded to the United States. *U. S. v. Forty-three Gallons of Whiskey*, 93 U. S., 188.

Congress may not only prohibit the introduction of whiskey and sale in the Indian country, but extend the prohibition to territory in proximity to that occupied by Indians. *Id.*

Lager beer is not "spirituous liquor or wine" within the meaning of U. S. R. S., Sec. 2139, as to introducing such liquor into the Indian country. *Sarlls v. U. S.*, 152 U. S., 570.

Congress can grant a right of way through Indian territory for a railroad, telegraph and telephone line, under power to regulate commerce with Indian tribes. *Cherokee Nation v. So. Kans. R'y*, 135 U. S., 641.

The State of Georgia passed a law that any white man who should live within the limits of the Cherokee nation should be arrested and forcibly removed. Rev. Samuel A. Worcester entered the limits of the Cherokee nation (then in the State of Georgia) as a missionary of the gospel, as he might do under the then existing treaties between the United States and the Cherokees. He was arrested and punished by State authorities under the State law. The Supreme Court, by Marshall, C. J., giving its opinion, decided that the State laws

were void, as they attempted to interfere with the intercourse with Indian tribes. *Worcester v. State of Georgia*, 6 Pet., 515.

NATURALIZATION.

The Congress shall have power, * * *

“To establish an uniform rule of naturalization throughout the United States.”

The power of naturalization is *exclusively* in Congress. *Chirac v. Chirac's Lessee*, 2 Wheat., 259, 269. “Our foreign intercourse being exclusively committed to the general government, it is peculiarly their province to determine who are entitled to the privilege of American citizens and the protection of the American government.” Marshall, C. J., *arguendo*, *Ogden v. Saunders*, 12 Wheat., 213, 277.

Under the act of Congress the alien is not required to report himself after arrival to any court; and the time of arrival does not have to be proved by the certificate that he has so reported. It may be proved by other evidence. *Spratt v. Spratt*, 4 Pet., 393.

The judgment that the alien be admitted, if in legal form, closes all inquiry as to the testimony on which it was rendered. *Spratt v. Spratt*, 4 Pet., 393. If the records of naturalization are destroyed secondary evidence is admissible to prove the fact. *Hogan v. Kurtz*, 94 U. S., 773.

The admission of a State on an equal footing with the original States, in all respects involves the admission as citizens of the United States of those whom Congress makes members of the political community and who were recognized as such, with the assent of Congress, in the formation of the new State. Collective naturalization may be effected in this way: Nebraska was admitted into the Union, and the act of admission made citizens of all persons who had under previous territorial law attained to vote on declaring their intentions. So the son of an alien who had declared intentions while son was a minor, became a citizen upon admission of Nebraska into the Union. *Boyd v. Nebraska*, 143 U. S., 135.

POWER TO EXCLUDE OR EXPEL ALIENS.

The United States has the right by virtue of its sovereignty to exclude or expel aliens or any class of aliens. *Fong You Ting v. United States*, 149 U. S., 698. *Wing Wong v. United States*, 163 U. S., 228. But before they can be punished or their property confiscated there must be judicial trial. *Id.* The Chinese exclusion act held valid. *Chae Chan Ping v. United States*, 130 U. S., 581.

UNIFORM BANKRUPTCY LAWS.

The Congress shall have power, * * *

"To establish * * * uniform laws on the subject of bankruptcy throughout the United States."

The power of Congress to pass bankruptcy laws is not exclusive of the power of States to pass such laws; but when Congress passes a law, it is paramount to all State laws. *Sturges v. Crowninshield*, 4 Wheat., 122.

A State law discharging a debtor from his debts is held to impair the obligation of a contract. *Id.*

A State law providing for the discharge of an insolvent does not impair the obligation of a future contract as between the citizens of the State. But it can not affect the rights of citizens of other states, nor contracts made before its passage. *Ogden v. Saunders*, 12 Wheat., 214; *Cook v. Moffat*, 5 How., 205; *Suydam v. Broadnax*, 6 Pet., 761.

A discharge under a foreign bankruptcy law is no bar to an action in the courts of this country. *McMillan v. McNeill*, 4 Wheat., 209. A State may, when no National bankrupt law is in force, discharge a bankrupt from the obligations of a future contract, but not a pre-existing one, and then only between its own citizens. Such future contract is made in view of the law, and the law is a part of it. *Id.*

But where a creditor, whether of the State in which

the bankruptcy proceedings under the State law (there being then no National bankrupt law), makes himself a party, comes in and proves his claim and takes a benefit under judicial proceedings conducted according to such law, he will be bound by it, as assenting thereto, and the debtor under such future contract will be discharged. *Gilman v. Lockwood*, 4 Wall., 409; *Butler v. Gorely*, 146 U. S., 303; *Baldwin v. Hale*, 1 Wall., 223.

Where the operation of a State bankruptcy law is suspended by the fact that a National bankruptcy law is in force, the repeal of the National bankruptcy law leaves the State law in full operation, and re-enactment of it not necessary. *Butler v. Gorely*, 146 U. S., 303.

POWER TO COIN MONEY AND REGULATE VALUES.

The Congress shall have power, * * *

"To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures."

This power is correlated to the prohibition of the States coining money, or making anything but gold and silver coin a tender of payment of debts; and when that clause is considered, the decisions on that point will be considered.

The principal decisions under this clause have grown out of the power of Congress to make its treasury notes a legal tender. In the first cases that came before the Supreme Court, it was held that the act of Feb. 25,

1862 (Stat. at L., c. 33), so far as it made United States notes a legal tender in payment of debts contracted prior to its passage was unconstitutional and void. *Willard v. Tayloe*, 8 Wall., 557; *McGlynn v. Magran*, 8 Wall., 639. The case of *Hepburn v. Griswold*, 8 Wall., 603, also held that making notes a legal tender is not an appropriate means for the exertion of the power to declare and carry on war, or any other power expressly vested in Congress.

But these cases were afterward overruled.

The Acts of Congress known as the legal tender acts are constitutional both as to debts before and after their passage. *Legal Tender Cases*, 12 Wall., 457; *Dooley v. Smith*, 13 Wall., 604; *Norwick, etc., R. R. v. Johnson*, 15 Wall., 195. These cases dwelt upon the power as a necessary one in time of war.

Congress has the constitutional power to make treasury notes a legal tender of payment of debts in time of peace as well as in time of war. *Juillard v. Greenman*, 110 U. S., 421.

POWER TO PUNISH COUNTERFEITING.

The Congress shall have power, * * *

"To provide for the punishment of counterfeiting the securities and current coin of the United States."

This power may be exercised to forbid the bringing into the country of coins in the similitude of the coins of

the United States. *United States v. Marigold*, 9 How., 560.

The power of Congress to punish counterfeiting is not exclusive. The States have power to pass laws to punish the passing of counterfeit money. *Fox v. State of Ohio*, 5 How., 433.

The cases construing acts of Congress against counterfeiting, etc., are *U. S. v. Gardner*, 10 Pet., 618; *U. S. v. Cantril*, 4 Cranch, 167; *U. S. v. Howell*, 11 Wall., 432; *U. S. v. Turner*, 7 Pet., 132; *U. S. v. Carll*, 105 U. S., 611; *U. S. v. Brewster*, 7 Pet., 164; *U. S. v. Randenbusch*, 8 Pet., 288.

Congress may punish the counterfeiting or bringing foreign coin into the country. *U. S. v. Marigold*, 9 How., 560.

And may punish the counterfeiting of securities of foreign governments. *U. S. v. Arjona*, 120 U. S., 479.

POST OFFICES AND ROADS.

The Congress shall have power, * * *

“To establish post offices and post-roads.”

1. “The power,” says Chief Justice Marshall, “is executed by the single act of making the establishment, in a strict sense. But from this has been inferred the power and duty of carrying the mail along the post road, from one post office to another. And from this

implied power has been again inferred the right to punish those who steal letters from the post office or rob the mail. It may be said with some plausibility that the right to carry the mail and to punish those who rob is not indispensably necessary to the establishment of a post office and a post road. This right is indeed essential to the beneficial exercise of the power; but not indispensably necessary to its existence. *McCulloch v. Maryland*, 4 Wheat., 416.

2. The power to establish post offices and post roads is conferred upon Congress, but the power has been delegated to the postmaster general; and the power to discontinue is incident to the power to establish them. *Ware v. U. S.*, 4 Wall., 617.

3. The Court, conceding that the power to legalize a bridge built across a navigable stream is not derived from the power to establish post roads, finds it to rest on the power to regulate commerce. *Wheeling Bridge Case*, 18 How., 431.

4. The power vested in Congress "to establish post offices and post roads" has been practically construed, since the foundation of the government, to authorize not merely the designation of the routes over which the mail shall be carried, and the offices where letters and other documents shall be received to be distributed or forwarded, but the carriage of the mails and all measures to secure safe and speedy transit and the prompt delivery of its contents. It "embraces the regulation

of the entire postal system of the country," and empowers Congress to decide what shall or shall not be carried in the mail. But such regulation can not be enforced so as to interfere in any manner with the freedom of the press. The post officials can not open letters or sealed packages subject to letter postage, and intended to be kept free from inspection. Such can only be opened under a warrant, the same as if in the owner's household. They are exempt from search and seizure in the mail except upon legally issued search warrants. *Ex parte Jackson*, 96 U. S., 727.

5. The power to establish post offices and post roads is not confined to the instrumentalities of the postal service known or in use when the Constitution was adopted, but keeps pace with the progress of the country and adapts itself to the new developments of time and circumstances. The Act of Congress (14 Stat. at L., 221, R. S., Sec. 5263) so far as it aids telegraph lines along post roads and excludes State interference, is a valid exercise of the postal power of Congress. *Pensacola Tel. Co. v. Western Un. Tel. Co.*, 96 U. S., 1.

6. The power to establish post offices and post roads carries with it all the powers necessary to make the grant effective, including the power to forbid the use of mails to carry matter used in the dissemination of crime or immorality, whether *malum in se* or *malum prohibita*; and Congress can exclude lottery matter

from the mails. *Ex parte Rapier*, 143 U. S., 110; *Horner v. U. S.*, 143 U. S., 207, 570.

“As under the Constitution power over * * * the transportation of the mails is vested in the National government, and Congress by virtue of such grant has assumed actual and direct control, it follows that the National government may prevent any unlawful and forcible interference therewith,” and may invoke the jurisdiction of the courts to interfere in such matters by injunction to prevent obstruction of the transportation of the mails, and the courts may punish disobedience of the injunction as a contempt of court. *In re Debs*, 158 U. S., 564, 581.

The United States have a property in the mails. They are not mere common carriers, but a government, performing a high official duty in holding and guarding its own property, as well as that of its citizens committed to its care; for a very large portion of the letters and packages conveyed in the mails consist of communications to or from the officers of executive departments, or members of the legislature on public service, or in matters of public concern. *Searight v. Stokes*, 3 How., 151, 169.

THE POWER OF COPYRIGHT AND PATENT.

The Congress shall have power, * * *

“To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

The power of Congress to legislate on the subject of patents is, by the terms of the Constitution, plenary; and as there can be no restraints on its exercise, there can be no limitation on the right of Congress to modify them at pleasure, so that the rights of property in existing patents are not taken away. *McClurg v. Kingsland*, 1 How., 202, 206. Congress may make special grants (*Bloomer v. Stolley*, 5 McLean, 156), and special extensions. *Blouchard's Factory v. Warner*, 1 Blatch., 258; *Evans v. Eaton*, Pet. C. C., 322.

In the United States an author has no exclusive property in a book or published work, except under some act of Congress, and obtains no such right but by complying with the acts of Congress securing the right. *Wheaton v. Peters*, 8 Pet., 591.

The power thus granted is domestic in its character, and necessarily confined within the limits of the United States; and the patentee's right of property and exclusive use can not extend beyond the limits to which the law itself is confined. The use of it outside the juris-

diction of the United States is not an infringement of his rights, nor is the use of it on a foreign vessel lawfully entering out ports. *Brown v. Duchesne*, 19 How., 183.

Congress has the constitutional right to protect photographs and negatives thereof by copyright, if they are a representation of original intellectual conceptions. *Burrows-Giles Lithographic Co. v. Sarony*, 111 U. S., 53.

The right of the patentee, under letters patent granted by the United States, is exclusive of the government, as well as others, and it can not use the patented invention without license or compensation to the owner. *Hollister v. Benedict, etc., Co.*, 113 U. S., 59; *U. S. v. Burns*, 12 Wall., 246; *Cammeyer v. Newton*, 94 U. S., 225; *James v. Campbell*, 104 U. S., 356; *United States v. Palmer*, 128 U. S., 262. The fact that the inventor is in the employ of the government at the time of the invention makes no difference. *Solomons v. U. S.*, 137 U. S., 342; *Belknap v. Schild*, 161 U. S., 10. An officer of the United States may be sued for such infringement. *Id.*

Rights secured to inventors must be exercised in subordination to police power of the States; but where a license tax to sell a patented article discriminates against non-residents or inventors not residing in the State, or their agents, it is void as in conflict with the commerce clause. *Webber v. Virginia*, 103 U. S., 344.

When, under a patent, tangible property comes into existence, its use is subject to the laws of the State to the same extent as other property. Letters patent were granted for "an improved burning oil." It was condemned by the State inspector as unsafe and the inventor was convicted for violating the State statute. *Held*, no interference with any right conferred by his letters patent. *Patterson v. Kentucky*, 97 U. S., 501.

The legislation based on this provision regards the right of property in the inventor as the medium of the public advantage derived from his invention, so that in every grant of the limited monopoly two interests are involved,—that of the public who are grantors and that of the patentee. The investigation of every claim is essentially judicial. *Butterworth v. Hoe*, 112 U. S., 59. And the Secretary of the Interior has no power to reverse the action of the Commissioner of Patents in awarding or refusing a patent. *Id.* The Court of Appeals of the District of Columbia may review the Commissioner's decisions. *U. S. v. Duell*, 172 U. S., 576.

Congress passed a law applicable to trade marks. 19 Stats. at L., 141. The act was held invalid, as a trademark is not a patent nor a copyright; and Congress can legislate upon it only when it relates to commerce with foreign nations, and among the Indian tribes, and the act was made applicable to all commerce. *Trademark Cases*, 100 U. S., 82.

INFERIOR COURTS.

The Congress shall have power, * * *

"To constitute tribunals inferior to the Supreme Court."

Congress has the power to establish circuit and district courts, and to confer on them equitable jurisdiction in cases coming within the reach of Federal jurisdiction. *Livingston v. Story*, 9 Pet., 632.

This jurisdiction is to be exercised uniformly throughout the United States, and can not be limited in its extent, or controlled in its exercise by the laws of the several States. *U. S. v. Howland*, 4 Wheat., 108; *Russell v. Southard*, 12 How., 139; *Neves v. Scott*, 13 How., 268; *The Lottawanna*, 21 Wall., 558; *Watts v. Camors*, 115 U. S., 353, 362; *Kirby v. Lake Shore, etc., Railroad*, 120 U. S., 130, 138.

Courts of the United States created under this power are all of limited jurisdiction but are not technically speaking inferior courts, whose judgments taken alone are to be disregarded. Their judgments and decrees are binding until reversed, and are not *coram non judice*, though no jurisdiction be shown in the record. *McCormick v. Sullivant*, 10 Wheat., 192.

No court of the United States, except the Supreme Court, possesses any jurisdiction not given by the legislative power. *U. S. v. Hudson*, 7 Cranch., 32. Consent of parties can not confer it. *Pacific R. R. v.*

Ketchum, 3 Dall. (U. S.), 289; Dewhurst v. Coulthard, 3 Dall. (U. S.), 409; "The Lucy," 8 Wall., 307; Peoples' Bank v. Calhoun, 102 U. S., 256. But the parties may admit the existence of facts which confer or show jurisdiction and the court may act judicially upon such decision. Id.

Other cases affecting the jurisdiction of the inferior courts will be treated under the article conferring judicial power.

PIRACY AND FELONIES ON HIGH SEAS.

The Congress shall have power, * * *

"To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations."

1. Robbery committed on the high seas, although such robbery, if committed on land, would not by the laws of the United States be punishable with death, is piracy under 1 Stat. at L., 113. Congress can not make that piracy which is not piracy by the laws of nations. U. S. v. Palmer, 3 Wheat., 610. It is considered within the criminal jurisdiction of all nations. U. S. v. Pirates, 5 Wheat., 184.

2. Manslaughter is not punishable in the courts of the United States, when committed in a river within the jurisdiction of a foreign sovereign. United States v. Wiltberger, 5 Wheat., 76.

3. The Federal courts have jurisdiction of murder or robbery on the high seas, though on board a vessel

not belonging to a citizen of the United States, if she had no national character, but was held by pirates and not lawfully under any foreign flag. *U. S. v. Holmes*, 5 Wheat., 412.

4. The law of nations requires every national government to "use due diligence" to prevent a wrong being done within its own dominion to another nation with which it is at peace, or to people thereof; and because of this, the obligation of one nation to punish those who, within its own jurisdiction, counterfeit the money of another nation has long been recognized. *U. S. v. Arjona*, 120 U. S., 479. Congress can constitutionally enact laws to punish the counterfeiting of the notes of a foreign bank or corporation. *Id.*

5. The act of Congress (3 Stat. at L., R. S., Sec. 5358), referring to the laws of nations for a definition of crime of piracy is a constitutional exercise of the power to define and punish that crime. *United States v. Smith*, 5 Wheat., 153.

6. The term "high seas," as used in the Federal statute (R. S., § 5346) for punishing assaults with a dangerous weapon or intent to commit felony, "upon the high seas, or in any arm of the sea, or on any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State," applies to the unenclosed waters of the great lakes, which are connected by the Detroit river. *U. S. v. Rodgers*, 150 U. S., 249.

THE WAR POWER.

The Congress shall have power, * * *

“To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.”

The war power.—“Upon these powers no restrictions are imposed.” “The power to declare war involves power to prosecute it by all the means and in any manner by which war may legitimately be prosecuted.” It therefore involves the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right. *Miller v. United States*, 11 Wall., 268.

Congress is not deprived of these great powers when the necessity for their exercise is called out by domestic insurrection and internal civil war. *Tyler v. Defrees*, 11 Wall., 331.

The exercise of the war power in time of civil war is so restricted that neither the President, nor Congress, nor the judiciary can disturb any one of the safeguards of civil liberty incorporated into the Constitution, except so far as the right is given to suspend in certain cases the privilege of the writ of *habeas corpus*. A citizen not connected with the military service and resi-

permit a limited commercial intercourse with the enemy and prescribe conditions therefor. *Hamilton v. Dillin*, 21 Wall., 73.

In a civil war the United States have all the powers of a sovereign and of the most favored belligerent. Their officers may capture property or seize private property, in obedience to the order of commanding general; and are not liable to private action for acting under such orders. *Lamar v. Browne*, 92 U. S., 187.

The President's proclamation of Sept. 7, 1867, did not operate as a dismissal of legal proceedings under the confiscation acts, or provide for the restoration of the property seized thereunder, nor divest the title of *bona fide* purchasers. *Semmes v. United States*, 91 U. S., 21.

LETTERS OF MARQUE AND REPRISAL.

To grant letters of marque and reprisal.—These words permit the grant of public authority to persons, who are not in the regular service of the country, to exercise the public power of warring upon and capturing vessels of the enemy upon the high seas, giving rise to the habit of what is known as *privateering*. The practice has in former times been much pursued of giving a commission called "letters of marque and reprisal" to some private owner of a vessel, who then armed it and sailed the seas, capturing such vessels of the enemy as

were lawful prize of war. These letters make acts lawful which otherwise would be piracy. The apology for this usage is (1) that it gives employment to seamen thrown out of employment by the war; (2) that it strengthens the naval power; (3) that it trains seamen to venturesomeness and furnishes good material for recruits for the navy. At the Convention of Paris in 1856 many nations agreed to the proposition that "privateering is abolished," and that is now the general rule. The United States refused to concur in this, as we then had so small a navy and so much sea coast. But in the war with Spain the Executive, fully in accord with the spirit of the age, refused to grant letters to privateers.

On this subject Story says: "This granting of letters of marque and reprisal is often a measure of peace to prevent a resort to war. Thus, individuals of a nation sometimes suffer from the depredations of foreign potentates, and yet it may not be deemed either expedient or necessary to redress such grievances by a general declaration of war. Under such circumstances the law of nations authorizes the sovereign of the injured individual to grant him this mode of redress." The words mean, letters of marque, that is, permission to pass the frontier, and "reprisal" to take, to make himself good of the property of the people of the nation which has plundered him. In time of war, and on the seas, letters of marque and reprisal are a general license

to capture enemy's goods wherever found. But now it is generally agreed that neutral ships make goods neutral unless captured in war; that is, goods such as munitions of war or supplies intended for the use of the army.

Under this clause and the succeeding one Congress passes laws and the Prize Act, when in force, permits the President to grant letters of marque and reprisal and to revoke and annul the same.

To make rules concerning captures on land and water.—Under this power Congress passes prize acts, regulating the capture of enemy's property and provides prize courts which determine whether the captured property is lawful prize of war. If so, it is sold and the money divided, part going to the officers and crew, the law fixing the proportion to each. The decisions of the Supreme Court mostly expound the prize laws or law of nations, rather than the text of the Constitution.

THE POWER TO RAISE ARMIES.

The Congress shall have power, * * *

"To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years."

Congress is the sole judge as to the size of the armies to be raised. The power to raise armies is a necessary

incident to the power to declare war. Under the articles of Confederation the Congress could only make requisitions on the States to furnish so many men clothed, armed and equipped; and the States often failed to respond. Hence, the power "to raise and support" armies. The people were very fearful of conferring so dangerous a power on the general government; but it was decided in the convention that by limiting the appropriation to two years the people could choose Representatives to cut off the supplies if they thought the army was too large or used for improper purposes.

THE POWER TO PROVIDE A NAVY.

The Congress shall have power, * * *

"To provide and maintain a navy."

1. "That a government, which possesses the broad power of war which 'may provide and maintain a navy,' which 'may make rules for the government and regulation of the land and naval forces,' has power to punish an offense committed by a marine, on board a ship of war, wherever that ship may lie, is a proposition never to be questioned in this Court." Ch. J. Marshall in *United States v. Bevan*, 3 Wheat., 336.

2. In the exercise of this power, Congress provided for the punishment of desertion and of other crimes not specified in the articles which should be punished ac-

ording to the laws and customs in such cases at sea. A seaman was charged with desertion and found guilty of attempting to desert, the Court had jurisdiction over the subject-matter and an action of trespass for false imprisonment will not lie against the ministerial officer, who executes the sentence for attempting to desert. *Dynes v. Hoover*, 20 How., 65.

3. The Acts of Congress (R. S., Sec. 1547) authorize the Secretary of the Navy to establish regulations for the navy with the approval of the President. Such regulations have the force of law. *Ex parte Reed*, 100 U. S., 13.

RULES AND REGULATIONS FOR ARMY AND NAVY.

The Congress shall have power, * * *

"To make rules for the government and regulation of the land and naval forces."

1. The law has conferred on the Secretary of War the power to make army regulations and these, when in conformity to the laws and articles of war, have the force of law. *Gratiot v. United States*, 4 How., 80; *Ex parte v. Reed*, 100 U. S., 13.

2. The authority of the head of an executive department to issue orders and regulations under direction of the President to have the force of law is subject to the condition that they conflict with no act of Congress. An order by the Secretary of the Navy that a service shall

not be a sea service, which the Congress has directed shall be a sea service, is invalid. *United States v. Symonds*, 120 U. S., 46.

3. Section 1547 of the R. S. passed since the adoption of the Navy Regulations of 1870, recognized those regulations as being in force, and declared that they should be recognized as the regulations of the navy, subject to alterations adopted in the same manner. The recognition must be understood as giving them the sanction of law. *Smith v. Whitney*, 116 U. S., 167, citing *United States v. Maurice*, 2 Brock., 96, 105.

CALLING OUT THE MILITIA.

The Congress shall have power, * * *

“To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.”

The Act of Pennsylvania, March 28, 1814 (Sec. 21) provided that officers and privates of the militia of that State neglecting or refusing to serve, when called into actual service pursuant to the order or requisition of the President, shall be liable to penalties imposed by the Act of Congress (1 Stat. at L., 424), or to any penalties since prescribed or thereafter to be prescribed. *Held*, not repugnant to the Constitution of the United States. *Houston v. Moore*, 5 Wheat., 1. It is here held that the Constitution intended that the Congress might pro-

vide for calling them forth; and that the State might punish those who refused or neglected to obey, Judges Story and Johnson dissenting. The points resolved in this and later opinions appear to be:

1. That under the Act 1795 (Stat. at L., Ch. 36, Sec. 1), the President is the one who is authorized to decide whether the militia should be called out and his decision is conclusive upon all persons; and the law is constitutional. *Martin v. Mott*, 12 Wheat., 19. In this case a militiaman had refused to enter the service of the United States on the call of the President. He had been court-martialed, found guilty and his property seized to satisfy the fine imposed. He brought replevin to recover the property; and the plea of the officer justifying under the proceedings was demurred to, thus raising the question of the constitutionality of the law.

2. The State has the power to control and regulate the organization of the military bodies and associations except when they are authorized by the United States. *Presser v. Illinois*, 116 U. S., 252.

3. The case of *Luther v. Borden*, 7 How., 1, is an important one. The facts briefly are: Rhode Island long after admission into the Union had the old Colonial Charter of 1663 for her Constitution. It restricted the suffrage to freeholders, and the representation in the legislature was grossly unequal, the political power virtually in a few hands, who refused to call a convention to amend or adopt a Constitution, extending the

suffrage and equalizing the representation. The disfranchised people and their sympathizers called a convention (outside of law and without legal authority), framed a Constitution and undertook by force, under a man named Dorr, who by their illegal votes had been chosen as governor, to set up a government. The Charter government resisted. There was martial law declared; and Borden by order of his superior officers broke and entered the plaintiff Luther's house. He was sued for trespass and his plea was that he acted by competent authority under the Charter government. This raised the question as to the legality of the two governments. The question came to the Supreme Court of the United States, which held: (1) Congress had delegated to the President by an earlier act (1 Stat. at L., 424; Act Feb. 28, 1795) the power to decide for the purposes of that act whether a government in a State was the duly constituted government of that State. (2) That after he had decided which was such government, the courts of the United States were bound to follow his decision. (3) That the government of a State has the power to protect itself from destruction by armed rebellion, by declaring martial law; and that the State legislature is the sole judge of the existence of the exigency rendering such action necessary. (4) The state of things existing was that martial law had been declared by those having authority to declare it; and the act complained of was justified by such authority.

During the war of 1812, to which several of the States were much opposed, the States claimed that their officers were in command of and subject only to the personal orders of the President, not to the officers under him. But this doctrine was long since given up. No claim of that kind was made but regular officers were in many instances placed over the troops raised in the States.

ORGANIZING AND DISCIPLINING THE MILITIA.

The Congress shall have power, * * *

“To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.”

EXCLUSIVE LEGISLATION OVER SEAT OF GOVERNMENT, ETC.

The Congress shall have power, * * *

“To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in

which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

The District of Columbia is not a "State" within the meaning of that term as used in the Constitution; and its citizens can not sue in the courts of the United States as citizens of any State. *Hepburn v. Ellzey*, 2 Cranch, 445.

Congress has authority to impose a direct tax on the District of Columbia, in proportion to the census directed to be taken by the Constitution. *Loughborough v. Lake*, 5 Wheat., 317.

The power of Congress to levy and collect taxes, duties, imposts and excises, is co-extensive with the territory of the United States. *Id.*

The power to exercise exclusive legislation in all cases within the district includes the power to tax it. *Id.* Congress in the exercise of the right of taxation may direct that half the amount of compensation awarded to owners of lands taken for public highways shall be charged to the lands benefited by the highway. The act providing for a permanent highway system in the District of Columbia held valid. *Parsons v. United States*, 167 U. S., 324.

After the cession of this territory by Maryland and Virginia, Congress had the same power that both States had previously possessed to modify the compact between those States by which a free use of the river was se-

cured to all the people residing in its borders. *Georgetown v. Alexandria Canal Co.*, 12 Pet., 91.

The counties of Washington and Alexandria (prior to the retrocession by Congress of the portion of the district lying in Virginia) constituting the district, and stood in the same relation to each other as counties in the same State, together constituting the district; and residents of one county, were not "beyond seas" with respect to each other. *Bank of Alexandria v. Dyer*, 14 Pet., 141.

The charter of the city of Washington did not authorize it to enforce the sale of lottery tickets in States whose laws prohibit such sales. *Cohens v. Virginia*, 6 Wheat., 264.

A police regulation by act of Congress relating exclusively to the internal trade of the States, can have no operation where as in the District of Columbia the legislative authority of Congress excludes territorially, all State legislation. *United States v. Dewett*, 9 Wall., 41.

Congress has power to confer on the city of Washington authority to assess upon lot owners along streets the expense of repairing the pavements. *Willard v. Presbury*, 14 Wall., 676.

The validity of the retrocession of the County of Alexandria to the State of Virginia, that State having been in possession of Virginia since 1847, can not now be questioned. *Phillips v. Pryne*, 92 U. S., 130.

When the United States acquires lands within the limits of a State by purchase with the consent of the legislature of the State for the erection of forts, magazines, arsenals, etc., the Constitution confers upon them exclusive jurisdiction of the tract so acquired; but when they acquire such lands in any other way than by purchase with consent of the State legislature, their exclusive jurisdiction is confined to the erections, buildings and land used for the purposes of the Federal government. A State may for such purpose cede to the United States exclusive jurisdiction over a tract of land; and may prescribe conditions to the cession, if not inconsistent with the effective use of the property, and may reserve the right to tax private property, railroad bridges, corporate franchises, etc. *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525.

The right to use the streets for any other than ordinary uses must proceed from Congress; and a railroad company can not lay its tracks in or across the streets without permission of Congress. *District of Columbia v. B. & P. R. R. Co.*, 114 U. S., 453.

The National Homes for Soldiers are under control of Congress, and State laws as to use of oleomargarine in hotels, eating houses, and the like do not apply to them. *Ohio v. Thomas*, 173 U. S., 276.

THE COEFFICIENT OR INCIDENTAL POWERS OF CONGRESS.

The Congress shall have power, * * *

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Congress must possess the choice of means and must be empowered to use any means which are in fact conducive to the exercise of the power granted by the Constitution. *United States v. Fisher*, 2 Cranch, 358.

If the end be within the scope of Congressional power, all means appropriate and plainly adapted to that end, not prohibited by the letter or spirit of the Constitution, are constitutional. *McCulloch v. Maryland*, 4 Wheat., 316; *Prigg v. Pennsylvania*, 16 Pet., 539.

The end being legitimate, Congress can judge of the necessity of the means. *Id.*

Instances of implied powers.—Congress may incorporate a bank. *McCulloch v. Maryland*, 4 Wheat., 316. May make United States treasury notes a legal tender in time of war or peace. *Legal Tender Cases*, 110 Wall., 421, overruling *Hepburn v. Griswold*, 8 Wall., 603 (see *ante*, p. 36). This is incident to the power to regulate the currency. 110 Wall., 438.

States may tax shares of stock of National banks, as this does not impair their usefulness as an instrumentality to carry out the powers of the government. *Nat. Bank v. Commonwealth*, 9 Wall., 353.

The interstate commerce act is constitutional, power to pass it being implied from the power to regulate commerce among the States. *Interstate Com. v. Brenson*, 154 U. S., 472, 473; *In re Debs*, 158 U. S., 578.

The Congress may, as an incident to the power to carry on war, provide that the operation of the statute of limitations shall be suspended during the war. *Stewart v. Kohn*, 11 Wall., 507.

✓ The Congress may make or authorize contracts with individuals or corporations for services to the government; may grant aids by money or land in preparation for and in the performance of such services; may exempt in its discretion, the agencies employed in such service from State taxation, which will prevent or impede the performance of them; yet in the absence of such exempting legislation, the exemption can not be applied to a corporation created by State law, exercising its franchise and holding its property therein, merely because of the employment in the service of the government. *Thompson v. Pac. R. R. Co.*, 9 Wall., 579.

The exemption of agencies depends on the effect; whether the tax prevents or deprives the agency to serve the government or hinders the efficient exercise of the

power to serve the government. *R. R. Co. v. Peniston*, 18 Wall., 5.

Congress may pass non-intercourse acts, under the war power. *Hamilton v. Dillin*, 21 Wall., 93.

The Congress may, as an aid to the execution of the revenue laws, provide for the punishment of persons interfering by threats or otherwise, with the right to inform a United States marshal of a violation of such laws. *In re Quarles*, 158 U. S., 507.

And Congress may prohibit the mailing of letters and circulars concerning lotteries. *In re Jackson*, 96 U. S., 727.

The power to dispose of the public lands includes the power to lease for mining purposes. *U. S. v. Gratiot*, 14 Pet., 536.

The power to erect buildings for public or National use includes the power to condemn lands for the purpose (*Kohl v. U. S.*, 91 U. S., 367, 373) in a State or in an Indian reservation. 33 Fed. Rep., 911.

The power to levy an income tax includes the power to seize or distrain property to collect it. *Springer v. U. S.*, 102 U. S., 593.

Congress may pass laws making it a felony or crime to conspire to injure prisoners in the custody of marshals. *Logan v. U. S.*, 144 U. S., 283.

And may pass laws prohibiting the receiving by a Federal officer of contributions for political campaigns. *Ex parte Curtis*, 106 U. S., 371.

And may give debts due the United States a preference over debts to other creditors. *U. S. v. Fisher*, 2 Cranch, 396.

And may create a municipal corporation within the District of Columbia, but can endow it only with authority to exercise municipal powers. Where it exceeds those powers, as where it exacts a license tax on trades and professions from commercial agents soliciting sales of goods on behalf of vendors doing business outside the district, such tax is void as such power can not be delegated to it. *Stoutenburg v. Hennick*, 129 U. S., 141.

Congress may pass acts to prevent unlawful occupancy of the public lands. With respect to the public lands within the limits of a State, the United States have the right of an ordinary proprietor to maintain possession and prosecute trespassers, and Congress may legislate for the protection of the lands and may sue and enjoin encroachment. *Camfield v. United States*, 167 U. S., 578.

POWERS INCIDENT TO SOVEREIGNTY.

There are certain implied powers resulting from the fact that the United States constitute a sovereignty. Among these may be mentioned:

The right to sue. This is a natural incident resulting from the sovereign character of the National gov-

ernment. *Dugan v. United States*, 3 Wheat., 173, 179, 180.

The right to enter into contract. *United States v. Tingry*, 5 Pet., 115.

Congress may punish offenses committed on ships of war, by persons not in the military or naval service, whether in port or at sea, for jurisdiction on board of public ships is everywhere deemed exclusively to belong to the sovereignty. *United States v. Bevan*, 3 Wheat., 288.

May pass exclusive acts to shut out Chinese. *Chinese Exclusion Cases*, 130 U. S., 581.

THE SLAVE TRADE.

SECTION 9. "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

This clause refers to the slave trade existing at the time in the United States and Europe; and sanctioned such importation until forbidden by Congress. *Dred Scott Case*, 19 How., 411.

SUSPENSION OF THE WRIT OF HABEAS CORPUS.

"The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it."

The President suspended the writ of *habeas corpus* as an executive act, at the breaking out of the rebellion. His power to do so was denied by Chief Justice Taney. *Ex parte* John Merryman, Taney, 246; by the Supreme Court of Wisconsin in Kemp's Case, 16 Wis., 359, and by other courts. The courts held that Congress might authorize the suspension; and Congress passed a law authorizing the suspension of the writ by the President when in his judgment the public safety required it, during the period covered by the war of the rebellion. This act was held constitutional by the courts; among them, *In re* Oliver, 17 Wis., 681.

The suspension of the privilege of the writ of *habeas corpus* does not suspend the writ itself. By this is meant that the court issues the writ just as if the privilege had not been suspended; and on the return made of the writ the court decides whether the party applying is denied the writ by the act of suspension. *Ex parte* Milligan, 4 Wall., 2, 130.

Congress can not invest a military commission organized in a State not in rebellion, in which the Federal courts are open, and in the proper unobstructed exer-

cise of judicial functions, with jurisdiction to try, convict and sentence for any criminal offense, a person who is neither a resident of rebellious State, nor a prisoner of war, nor in the military or naval service. *Ex parte Milligan*, 4 Wall., 2.

The Supreme Court in *Ex parte Vallandigham*, 1 Wall., 242, held it had no jurisdiction to issue the writ of *habeas corpus* to review or reverse the proceedings of a military commission.

The Supreme Court can issue a writ of *habeas corpus* to a military commission to produce a prisoner held on a charge of murder. *Ex parte Yenger*, 8 Wall., 85.

NOTE.—As most of the cases on *habeas corpus* relate to the jurisdiction to issue the writ rather than the suspension of it, they will be considered under the section relating to jurisdiction of the Supreme Court. For a full citation of authorities on the subject of *habeas corpus*, under the acts of Congress, see Gould & Tucker's Notes to U. S. R. S., Secs. 759, 764.

BILLS OF ATTAINDER AND EX POST FACTO LAWS.

“No bill of attainder or ex post facto law shall be passed.”

“*Bills of attainder*,” says Story, “as they are technically called, are such special acts of the legislature as inflict capital punishment upon persons supposed to be guilty of high offenses, such as treason and felony, with-

out any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death it is called 'a bill of pains and penalties.' "

But a definition was given by Chief Justice Marshall in *Fletcher v. Peck*, 6 Cranch, 87, where he says: "A bill of attainder may affect the life of an individual or may confiscate his estate, or both." This was a favorite resort of tyranny to be rid of troublesome subjects, by attainting them, and having the attainder work corruption of blood and forfeiture of estate, so that one's life and estate might be taken and his children outlawed. As a power liable to abuse in times of strong public excitement, partisan passion or popular prejudice, it was wisely forbidden by the Constitution to the Congress and to any State to pass such laws.

The power to banish from the State and confiscate property is not attainder. *Cooper v. Telfair*, 4 Dall., 14. This was a law passed before the adoption of the Constitution.

"A bill of attainder can be only for crimes already committed; and a law is not *ex post facto*, unless it looks back to an act done before its passage." Ch. J. Marshall in *Ogden v. Saunders*, 12 Wheat., 335.

The phrase *ex post facto* laws is not applicable to civil laws but to penal and criminal laws, which can punish no party for acts antecedently done, which were not punishable at all when committed or not punishable to

the extent or in the manner prescribed. *Watson v. Mercer*, 8 Peters, 110, citing *Calder v. Bull*, 3 Dall., 386; *Fletcher v. Peck*, 6 Cranch, 87; *Ogden v. Saunders*, 12 Wheat., 266; *Satterlee v. Matthewson*, 2 Pet., 380.

A resolution of the legislature of a State or a law, setting aside a decree of a court of probate or granting a new hearing with liberty of appeal is not an *ex post facto* law. *Calder v. Bull*, *supra*.

A law passed after death of a citizen compelling executors to pay a tax, from property on their lands in a State, or property out of the State, is not *ex post facto*. *Carpenter v. Pennsylvania*, 17 How., 456.

A statute which simply authorizes the imposition of a tax according to a previous assessment is not invalid. An act may be retrospective and not be *ex post facto*. *Locke v. New Orleans*, 4 Wall., 172.

The clauses of the Constitution adopted in the State of Missouri after the civil war, which deprived priests and clergymen of the right to preach and teach because of antecedent sympathy with the rebellion, held *ex post facto* and void. *Cummings v. Missouri*, 4 Wall., 277.

An act of Congress debarring persons from practicing in the Federal courts, unless they took an oath that they had not voluntarily given aid or countenance to the rebellion, held void as *ex post facto*. *Ex parte Garland*, 4 Wall., 333.

The Constitution of the State of Missouri, adopted

in 1865, provided that no person should be prosecuted in a civil action for, or on account of any act by him done, or performed, after January 1, 1861, by virtue of military authority vested in him by the government of the United States or State, or in pursuance of orders received by him from any person vested with such authority. It also provided that the immunity of the section might be pleaded in bar of any action or proceeding begun before or after the adoption of the section. It was held not an *ex post facto* law nor a bill of attainder, nor an act impairing the obligation of a contract. *Drehman v. Stifle*, 8 Wall., 595.

An act of West Virginia, which deprived a person of a right for past misconduct without judicial trial, partook of the nature of a bill of pains and penalties and was unconstitutional. *Pierce v. Carskadon*, 16 Wall., 234.

A statute in New York passed in 1895, prohibited any one from practicing medicine, who had ever been convicted of felony. H. had been found guilty and convicted before this statute in 1878 of procuring an abortion. *Held*, in Supreme Court of the State and in the Supreme Court of the United States that this was a reasonable police regulation and not an *ex post facto* law. *Hawker v. New York*, 170 U. S., 201. Several judges dissenting.

"The inhibition upon the passage of *ex post facto* laws does not give a criminal a right to be tried, in all

respects, by the law in force when the crime charged was committed. The mode of trial is always under legislative control, subject only to the condition that the legislature may not under the guise of establishing modes of procedure and prescribing remedies, violate the accepted principles that protect an accused person against *ex post facto* enactments." *Gibson v. Mississippi*, 162 U. S., 565.

A statute which simply enlarges the class of persons which may be competent to testify, is not *ex post facto* in its application to offenses previously committed; for it does not attach criminality to any act previously done, which when done did not violate law, nor does it alter the punishment or lessen the amount of proof necessary. It merely alters the mode of procedure in which the accused has no vested right. *Hopt v. Utah*, 110 U. S., 574.

The prescribing of different modes of procedure, and the abolition of courts and creation of new ones, leaving untouched all the substantial protections with which the existing law surrounds the accused, is not an *ex post facto* law, as meant in the Constitution. *Duncan v. Missouri*, 152 U. S., 377.

The act of March 1, 1889 (25 Stat. at L., 785, Ch. 333), which subjects persons charged with murder committed under the exclusive jurisdiction of the United States, but not within any State, to trial in a judicial district different from the one in which they

might have been tried at the time the offense was committed is not an *ex post facto* law, as a change of the place of the trial is not involved in any of the definitions of an *ex post facto* law. *Cook v. United States*, 138 U. S., 157.

The statute of a State authorizing the comparison of disputed hand writing with any writing proved to be genuine is not an *ex post facto* law, in its application as altering the rules of evidence in existence at the time of the commission of the offense. *Thompson v. Missouri*, 171 U. S., 380.

An act of Congress approved in the afternoon raised the duty on tobacco, and imposed a fine for removing it from the warehouse without the stamp to show that the tax had been paid. *Held*, that this act would operate as *ex post facto* as to tobacco removed the same day at an earlier hour. *Burgess v. Salmon*, 97 U. S., 381.

The decisions as to *ex post facto* laws are made under the two clauses, one forbidding Congress to pass such laws, the other forbidding the States from passing the like. Instances of State *ex post facto* laws and decisions relating to the same will be found on page 146. In either case the Supreme Court can review the decision, in the exercise of its appellate jurisdiction.

DIRECT TAXES, ETC., ETC.

"No capitation, or other direct tax, shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken."

See cases cited under Section 2, Article I, *ante*, p. 8.

In *Loughborough v. Blake*, 5 Wheat., 317, this question arose. The Act of Congress laid a direct tax on all the States. A later act of the same year laid a direct tax on the District of Columbia, according to the rule of apportionment. This was contested in the above case. It was held that Congress could lay such tax on the District of Columbia; but if laid it must be according to the rule of apportionment. In this opinion occurs the dictum of Chief Justice Marshall that the territories are part of the United States and subject to the same rule as to uniformity of imposts and duties, which is now under public discussion. He decides that the tax laid on the District of Columbia was legal. But he argued if it could not rest on the 9th section, it could rest on the power of exclusive legislation given to Congress over the District.

The "License Tax Cases," 5 Wall., 462, settle the principle that the license taxes imposed by the internal revenue law, and the prohibitions against carrying on business without such licenses, do not violate the Constitution.

The income tax of 1864 (13 Stat. at L., 218) was held not a direct tax; but it was said that "direct taxes" are only capitation taxes and taxes on real estate. *Springer v. United States*, 102 U. S., 586.

An income tax which levies a tax upon the income of real estate, or upon the income derived from municipal bonds, is invalid. *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S., 429; 158 U. S., 601. The reasoning of the court is that the tax on rents of land is a "direct tax;" and that the tax on the income derived from municipal bonds tends to cripple the powers of the subdivisions of the State government.

ARTICLES EXPORTED FROM THE STATES.

"No tax or duty shall be laid on articles exported from any State."

The acts of Congress of July 20, 1868 (15 Stat. at L., 157), and June 6, 1872 (17 Stat. at L., 254), so far as they relate to snuff and tobacco intended for exportation, do not impose a stamp tax or duty by stamp on exports within the meaning of that clause of the Constitution which declares that "no tax or duty shall be laid on articles exported from any State." *Pace v. Burgess*, 92 U. S., 372. The stamp required by the act was intended to prevent fraud and to relieve it from taxation to which other tobacco was subjected. *Id.* *Turpin v. Burgess*, 117 U. S., 504. An excise laid on tobacco be-

fore its removal from the factory is not such duty on exports. *Id.* The prohibition has reference to the imposition of duties on goods by reason of or because of their exportation or intended exportation or whilst being exported, and does not affect their taxation as part of the general mass of property in a State. *Coe v. Errol*, 116 U. S., 517.

The provisions of the R. S., Sec. 3330, for the withdrawal of distilled spirits from bonded warehouses for exportation in the original casks, and allowing a tax to be assessed upon the deficiency by evaporation after the giving of an exportation bond, is not a violation of the clause prohibiting a tax upon articles exported from the State, as the property is not yet in process of exportation on the mere giving an exportation bond. *Thompson v. United States*, 142 U. S., 471.

NO PREFERENCE OF ONE STATE OVER ANOTHER.

"No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another."

This clause does not prohibit a municipal corporation owning improved wharves and other artificial means which it maintains at its own cost, for the benefit of those engaged in commerce upon its public navigable waters of the United States, from charging and collecting reasonable fees for wharfage. *Packett Co. v.*

Keokuk, 95 U. S., 80; Packet Co. v. St. Louis, 100 U. S., 423; Packet Co. v. Catlettsburg, 105 U. S., 559. The wharfage may be charged in proportion to the tonnage of the vessel. *Id.*

A quarantine tax or fee, for examining the sanitary condition of a ship, does not contravene this provision. *Morgan, etc., Co. v. Louisiana*, 118 U. S., 455, 467.

The Act of Congress of August 31 (10 Stat. at L., 112), declaring the bridge across the Ohio river at Wheeling a lawful structure, and requiring vessels to be so constructed as not to interfere with it, as then constituted, is not in conflict with the "no preference" clause of the Constitution. *Pennsylvania v. Wheeling, etc., Bridge Co.*, 18 How., 421.

This limitation operates only as a restriction on the powers of Congress, and in no respects affects the States in the regulation of their domestic affairs. The Illinois Constitution of 1870 contained an article declaring warehouses and elevators where grain is stored public, and providing for their regulation, is not repugnant to this clause. *Munn v. Illinois*, 94 U. S., 113; *Morgan v. Louisiana*, 118 U. S., 455, 467.

MONEY DRAWN FROM TREASURY.

"No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."



TITLES OF NOBILITY, ETC., FORBIDDEN.

"No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State."

PROHIBITIONS ON THE STATES.

SECTION 10. "No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

1. *What are bills of credit.*—Certificates of indebtedness issued by the State of Missouri, in sums not exceeding ten dollars, nor less than fifty cents, receivable in payment of all State, county, and town dues, etc., the faith of the State being pledged for their redemption, are "bills of credit," and can not lawfully be issued. *Craig v. Missouri*, 4 Pet., 410; *Byrne v. State of Missouri*, 8 Pet., 40.

2. *What are not bills of credit.*—The Bank of the Commonwealth of Kentucky was a corporation chartered by the State. The State owned all the stock of

the bank, to which the holders of bills could resort for payment. There was no promise that the State would pay. The bank notes of this bank were held not to be bills of credit within the Constitution. *Briscoe v. Bank of Commonwealth of Kentucky*, 11 Pet., 257.

A like bank was incorporated in Alabama, with capital stock paid in, liable for, and subject to be sued for debts. The State owned all the stock and the legislature elected directors. Its bills were received in payment of public debts and the State pledged its faith for their redemption. *Held*, not "bills of credit." *Darlington v. State Bank of Alabama*, 13 How., 12.

In 1836, the legislature chartered a banking corporation. The State was the sole stockholder, and the bills and notes of the bank were made receivable for all debts due the State. Following *Briscoe v. Bank of Kentucky*, 11 Pet., 311, these notes were held not bills of credit issued by the State. *Woodruff v. Trapnall*, 10 How., 203.

Coupons attached to a State bond and receivable by the terms of the contract for taxes are not "bills of credit" within the meaning of the Constitution. *Poindexter v. Greenhow*, 114 U. S., 270; *Virginia Coupon Cases*, (*Poindexter v. Greenhow*, 114 U. S., 270).

A warrant drawn by State authorities in payment of an appropriation is not "a bill of credit," in violation of the Constitution. Art. I, Sec. 10; *Houston v. Texas*, 177 U. S., 66.

WHAT ARE EX POST FACTO LAWS?

(See pages 135-139.) A law changing the place of trial from one county to another, in the same district, from that where the offense was committed, is not an *ex post facto* law. *Gut v. The State*, 9 Wall., 35.

Although the prohibition of the Constitution to pass *ex post facto* laws is aimed at criminal cases, it can not be evaded by giving a civil form to that which is in substance criminal. *Cummings v. Missouri*, 4 Wall., 277.

But a State law which, in relation to a particular offense or its consequences, alters the situation of the defendant to his disadvantage is *ex post facto*. *Kring v. Missouri*, 107 U. S., 221. Thus, where the law at time of the offense made conviction on plea of guilty to murder in the second degree, a bar to a prosecution for murder in the first degree, a change in the law to remove such bar is *ex post facto*.

An act which is not an offense at the time it is committed can not become such by any subsequent independent act of the party with which it has no connection. Acts of bankruptcy or to defraud creditors can not be punished under a statute passed after the act was committed. *United States v. Fox*, 95 U. S., 570.

An act approved in the afternoon raised the duty on tobacco and provided that a fine should be imposed for removing it from the warehouse, without the stamp to

show payment of the tax. As to tobacco removed in the morning of the same day the act was *ex post facto*. *Burgess v. Salmon*, 97 U. S., 381.

Any law passed after the commission of the offense for which the party is being tried is an *ex post facto* law when it inflicts a greater punishment than the law annexed to the crime at the time it was committed, or which alters the situation of the accused to his disadvantage. *Re Medley*, 134 U. S., 160. So, a State law which gave power to the warden of the prison to execute a prisoner at any day and hour during a designated week, was held void as to crime previously committed. *Id.*

IMPAIRING CONTRACT OBLIGATIONS.

Instances in which state laws have been held to impair the obligation of a contract.—A State, unless restricted by its Constitution, may contract to release the taxing power. *Jefferson Branch Bank v. Skelly*, 1 Black, 436; *Piqua Branch Bank v. Knoop*, 16 How., 369, affirmed.

The Dartmouth College case.—The charter granted by the British Crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, is a contract within the meaning of that clause of the Constitution which declares that “no State shall make any law impairing the obligation of a contract.” *Dartmouth College v. Woodward*, 4 Wheat., 518. The legislature in

this case attempted to alter the charter so as to obtain a practical control of the institution, which the charter gave to trustees, having a perpetual succession and right to fill all vacancies in the board of trustees. The act attempted to place the control under twenty-one trustees instead of the twelve provided by the charter, the trustees to be appointed by the governor and council. In this great leading case it was held that such legislation impaired the contract of the original charter, and the act was held void.

In 1836 the legislature of Arkansas chartered a banking corporation of which the State was to be sole stockholder, which charter provided that the bills and notes of such bank "should be received in payment of all debts due the State." The repeal of this provision impaired the obligation of a contract. *Woodruff v. Trapnall*, 10 How., 190.

Where a legislature of a State accepted from banking corporations a "bonus" as consideration for the franchise granted, and pledged the faith of the State "not to impose any further tax or burden upon them during the continuance of their charters," *held*, that a tax upon the stockholders, by reason of their stock, was a violation of this contract, and the further tax was illegal. *Gordon v. Appeal Tax Court*, 3 How., 133.

The charter of a bank fixing a rate of taxation as in lieu of all other taxes, is a contract between the State and the bank, and is impaired by the imposition of

other taxes. *Farrington v. Tennessee*, 95 U. S., 679; *Piqua Branch Bk. v. Knoop*, 16 How., 369; *Dodge v. Woolsey*, 18 How., 331; *Mech. & Traders' Bk. v. Thomas*, 18 How., 384; *Jefferson Branch Bk. v. Shelly*, 1 Black., 436; *Franklin Bk. v. Ohio*, 1 Black., 474; *New Jersey v. Yard*, 95 U. S., 114.

The charter of the Bank of Tennessee provided "that the bills or notes of said corporation, originally made payable, or which shall have become payable on demand in gold or silver, shall be receivable at the treasury of the State and by all tax-collectors and other public officers for taxes or other money due the State." This guaranty was a contract and attached to every note issued while the statute was in force, and a subsequent law limiting the notes that should be thus secured to those only that were passing at par did not repeal the above quoted section. *Furman v. Nichol*, 8 Wall., 44.

A provision in a charter of a corporation, by which a State legislature relinquishes its power to tax the corporation, constitutes a contract which the State can not subsequently impair. *Humphrey v. Pegues*, 16 Wall., 244; *Home of the Friendless v. Rouse*, 8 Wall., 430; *Wilmington, etc., R. Co. v. Reid*, 13 Wall., 264, 269; *Farrington v. Tennessee*, 95 U. S., 679; *St. Anna's Asylum v. New Orleans*, 105 U. S., 362.

Reserved right to alter or amend.—But where, when the charter is granted, the Constitution or a general

law, provides that charters may be altered, amended or repealed, the corporation may be subjected to taxation from which it had been exempted. *Charleston v. Branch*, 15 Wall., 470; *Tomlinson v. Jessup*, 15 Wall., 454; *Un. Pass. R. Co. v. Phila.*, 101 U. S., 528; *Miller v. State*, 15 Wall., 478; *Denny v. Bennett*, 128 U. S., 495; *Railway Co. v. Philadelphia*, 101 U. S., 539; *Spring Valley Water Co. v. Schottler*, 110 U. S., 352; *Citizens' Bank v. Owensboro*, 173 U. S., 651; *Miller v. State*, 15 Wall., 493; *Sinking-Fund Cases*, 99 U. S., 748. A statute permitting each stockholder of a corporation to cumulate his votes upon any one or more candidates for directors (*Mich. Stats.*, 1885, Ch. 112) is within the reserved power to alter, amend or repeal, reserved by the State Constitution to the legislature and does not impair the obligation of the contract between the State and the corporation by the original charter. *Loaker v. Maynard*, 179 U. S., —. (Decided Oct. 15, 1900.)

Where a charter exempts the capital stock from taxation, the shares are exempt. *Tennessee v. Withworth*, 117 U. S., 129. But this does not exempt other property than the stock. *Trask v. Maguire*, 18 Wall., 391; *Memphis, etc., R. Co. v. Gaines*, 97 U. S., 697; *St. Louis, Iron Mt., etc., Co. v. Loftin*, 98 U. S., 559.

NOTE.—The principle of the *Dartmouth College* case that a charter is a contract has been many times affirmed by the Supreme Court. "The doctrines of this case are so imbedded in the jurisprudence of the United States as to make them to all

intents and purposes a part of the Constitution itself." *Stone v. Mississippi*, 101 U. S., 816. It has been applied in the following classes of cases:

1. Charters of private corporations are contracts, which are protected against laws impairing them. *Binghamton Bridge*, 3 Wall., 51; *Davis v. Gray*, 16 Wall., 203; *Humphrey v. Pegues*, 16 Wall., 249.

2. Where a state banking law provided that 6 per cent. of the dividends declared should be paid to the State in lieu of all other taxes. *Piqua Branch Bank v. Knoop*, 16 How., 382, 389; followed in *Farrington v. Tennessee*, 95 U. S., 690; *Dodge v. Woolsey*, 18 How., 331; *Mechanics', etc., Bank v. Debolt*, 18 How., 380; *Jefferson Branch Bank v. Skelly*, 1 Black., 436; *Franklin Branch Bank v. Ohio*, 1 Black., 474.

Or, where a State makes a valid contract with a private corporation that it or its property within the State shall be subject to a limited, or *exempted from, taxation*, subsequent legislation can not impair such contract. *New Jersey v. Wilson*, 7 Cranch, 164; *Gordon v. Appeal Tax Court*, 3 How., 133; *Achison v. Huddleson*, 12 How., 293; *McGee v. Mathis*, 4 Wall., 143; *Van Hoffman v. Quincy*, 4 Wall., 535; *Wilmington R. R. Co. v. Reid*, 13 Wall., 264; *Tomlinson v. Branch*, 15 Wall., 460; *Humphrey v. Pegues*, 16 Wall., 244.

A charter creating a benevolent private corporation which enables and encourages persons to invest in such corporation, for such purposes, and declares that its property shall be exempt from taxation, constitutes a contract, and a subsequent law taxing the property thus exempted by the charter impairs the obligation of the contract, and is void. *Home of the Friendless v. Rouse*, 8 Wall., 430; *Washington University v. Rouse*, 8 Wall., 439; *Dodge v. Woolsey*, 18 How., 378; *Farrington v. Tennessee*, 95 U. S., 683. But the contract of exemption must be so clear, explicit and determinate that there can be no doubt as to its terms or the consideration that makes it binding. 8 Wall., 439. When exemption is granted subsequently to the original charter, it must to be a contract, be supported by some valuable consideration, otherwise it is a mere gratuity. *Grand Lodge v. New Orleans*, 166 U. S., 146.

3. But where an exemption from taxation is conferred on a corporation already in existence without consideration, such exemption can be repealed without impairing any contract obligation. *Rector v. Philadelphia*, 24 How., 300; *Tucker v. Furguson*, 22 Wall., 574; *West Wisconsin R. R. Co. v. Supervisors*, 93 U. S., 598.

4. And where the State legislature has no power to exempt property from taxation, there is no contract to be impaired. *R. R. Co. v. Palmes*, 109 U. S., 257.

5. Where there is an implied reservation in a charter that it might be altered at the pleasure of the legislature, the charter may be altered without violating this constitutional provision. *Pennsylvania College Cases*, 13 Wall., 190.

An act gave a charter to a corporation to build a toll bridge and take tolls fixed by the act, and further enacted that it should not be lawful for any other person or persons to build a bridge within two miles, either above or below. This meant that the legislature would not authorize such rival bridge to be built within the prescribed distance, and a subsequent law attempting such authorization impaired the contract. *The Binghampton Bridge*, 3 Wall., 51. This case differs from the *Charles River Bridge v. The Warren Bridge*, 11 Peters, 420, in this, that in the last cited case there was no express nor implied agreement that the State would not authorize another bridge to be built to the injury of the first one.

Another limitation on the doctrine of the *Dartmouth College* case is that where a charter may be a contract, yet while unexecuted on the part of the corporation, it may be modified. Thus a railroad charter expressly prohibited the consolidation of competing lines. Before the railroad had been built, consolidation was permitted by a subsequent act, which was held not to impair a contract. *Pearsall v. Great Northern Ry. Co.*, 161 U. S., 646.

The doctrine is further qualified in this, that the State may exercise eminent domain, and thus greatly affect the rights granted by a charter. *West Riv. Bridge Co. v. Dix*, 6 How., 507; *East Hartford v. Bridge Co.*, 10 How., 536; *Greenwood*

v. Freight Co., 105 U. S., 22; **Long Island, etc., Co. v. Brooklyn**, 166 U. S., 691.

Such charters will be *construed strictly* against the corporation. **Charles River Bridge Co. v. Warren Bridge Co.**, 11 Pet., 582, 618, 645.

Where a charter grants the power to charge reasonable tolls, the legislature may by later legislation regulate the tolls or rates. **Munn v. Illinois**, 94 U. S., 113; **Winona R. R. Co. v. Blake**, 94 U. S., 180; **Stone v. Farmers' Loan and Trust Co.**, 116 U. S., 330; **Georgia, etc., Co. v. Smith**, 128 U. S., 174.

No legislature can bargain away the public health or the public morals. The people themselves can not do it, much less their servants. The police power of the State which rests largely in legislative discretion can not be parted with. **Stone v. Mississippi**, 101 U. S., 819. Thus, a fertilizing company was granted a charter, and allowed to build works at a certain point, and was afterwards crippled by sanitary legislation. **Fertilizing Co. v. Hyde Park**, 97 U. S., 659.

The grant of power of taxation to a *municipal* corporation, is not a contract; but may be revoked or changed by the legislature. **Williamson v. New Jersey**, 130 U. S., 189; **East Hartford Bridge Co.**, 10 How., 536; **Aspinwall v. Comm'rs**, 22 How., 377; **New Orleans v. New Orleans Water Co.**, 142 U. S., 89. These authorities all refer back to a dictum in the **Dartmouth College Case**, 4 Wheat., 694.

Contracts made by States can not be impaired by subsequent State laws. **New Jersey v. Wilson**, 7 Cranch., 134; **Green v. Biddle**, 8 Wheat., 1; **Providence Bank v. Billings**, 4 Pet., 514; **Davis v. Gray**, 16 Wall., 203; **United States v. New Orleans**, 103 U. S., 358.

A State having issued bonds, offered to issue new bonds in their place, whenever the holders chose to ac-

cept the terms of the exchange. This offer created no contract, and the State could withdraw it. *Durkee v. Board of Liquidation*, 103 U. S., 646.

If a State legislature make a grant in fee, a subsequent legislature can not take the title away from a *bona fide* purchaser for a valuable consideration from the first grantee. The grant is an executed contract and its obligations can not be impaired by a law of the State. Contracts by a State can not be impaired. *Fletcher v. Peck*, 6 Cranch, 87.

A legislative act passed in consideration of a release of title by the Indians, declaring that certain lands which should be purchased by the Indians should not thereafter be taxable, held to be a contract which a subsequent legislature could not repeal. *New Jersey v. Wilson*, 7 Cranch, 164.

A mortgage contained a power to the creditor to sell on breach of condition, and thereby pay the debt, which was a valid power when given. A subsequent law attempted to give the mortgagor twelve months in which to redeem the property from the purchasers at such sale, and prohibited it from being made for less than two-thirds of the value. *Held*, that this so altered the remedy as to impair the obligation of the contract. *Bronson v. Kinzie*, 1 How., 311.

A State law which prohibited property from being sold on execution at less than two-thirds its valuation, as made by appraisers pursuant to directions in the law,

impairs the obligation of a contract. *McCracken v. Hayward*, 2 How., 608.

But where the debt was made by the terms of the bonds of the State payable "in specie or its equivalent," this decision was not applicable. *Paup v. Drew*, 10 How., 218.

Where the charter of a corporation sets apart a fund out of which its debts are to be paid, this amounts to a contract with creditors that the fund shall not be withdrawn; and a law, which deprives creditors of the corporation of all legal remedy, impairs the obligation of a contract. *Curran v. Arkansas*, 15 How., 304.

Congress provided (2 Stat. at L., 279) that a township of land in Indiana be located for the use of a seminary of learning. The legislature incorporated the trustees of the Vincennes University, and granted to them powers to hold this land for the use aforesaid. *Held*, that the corporation took this land, and the title could not be divested and conferred upon another body politic. *Trustees of Vincennes University v. Indiana*, 14 How., 268.

A State statute repealing a former statute which made the stock of the stockholders in a chartered company liable to the corporation's debts is, as respects creditors whose claims existed at the time of the repeal, a law impairing the contract obligation. This is so even though the liability of the holder is in some respects conditional only; and though the stockholder was not made, by the statute repealed, liable in any way in his

person or property generally for the debts of the corporation. *Hawthorne v. Calef*, 2 Wall., 10.

A State (New York) gave a charter to build a toll bridge and take toll as fixed by the act; and that it should not be lawful for any person or persons to erect any bridge within two miles either above or below the bridge authorized. This was a contract not to be impaired, though the charter was without limit as to period of duration. *Chenango, etc., Co. v. Binghamton Bridge Co.*, 3 Wall., 51.

Where a statute has authorized a municipal corporation to issue bonds and to exercise the power of local taxation to pay them, and persons have bought and paid value for bonds issued accordingly, the power of taxation thus given is a contract within the meaning of the Constitution, and can not be withdrawn until the contract is satisfied. A subsequent statute repealing or restricting the power of taxation so previously given, is, as to bonds theretofore issued, a nullity. The corporation must levy taxes as though the second statute had not been passed, and will be compelled to do so by *mandamus*. *Van Hoffman v. City of Quincy*, 4 Wall., 535.

A statute which for the declared purpose of aiding a charitable institution exempted its property from taxation, and enacted that an existing statute provision that all charters of incorporation should be subject to alteration, repeal or suspension should not apply to it, is a contract; and the State can not tax the property so long as the corporation owns it and applies it to the uses for

which the charter was granted; and a later law subjecting such property to taxation, violates the Constitution. *Home of the Friendless v. Rouse*, 8 Wall., 430. The same ruling as to an institution of learning. *Washington University v. Rouse*, 8 Wall., 439. A State may make a valid contract that a corporation or its property shall be exempt from taxation or subject to a limited or specific taxation. *Erie Ry. Co. v. Pennsylvania*, 21 Wall., 498, and cases cited.

A statute limiting the tax which a municipal body can levy on the assessed value in any one year, does not apply where a judgment has been recovered against the municipality. It is the duty of the municipality to levy a tax to pay off the judgment; and this will in proper case be compelled by *mandamus*. *Butz v. City of Muscatine*, 8 Wall., 575.

Bonds issued by railroad company are property in hands of holders, and when held by non-residents of the State, where the company is incorporated, are property beyond the jurisdiction of the State. A law taxing such bonds and requiring the treasurer of the corporation to deduct it from interest due and pay it into the State treasury, impairs the contract. *State Tax on Foreign-held Bonds*, 15 Wall., 300.

A judgment-debtor whose lien has attached to certain lands can not be divested thereof by an extension of the exemption laws to include lands not exempt when the lien attached. *Gunn v. Barry*, 15 Wall., 610.

A charter was amended to exempt railroad property

from taxation and give the franchise anew. *Held*, that this was a case where the exemption had the force of a contract and that the exemption could not be repealed. *Humphrey v. Pegues*, 15 Wall., 244.

A law of Georgia provided that in all suits pending on any promissory note the plaintiff could not recover unless he proved that he had paid taxes on the note for each year since the making of the same, making such payment of taxes a condition precedent of recovering. *Held*, that this impaired the obligation of a contract. *Walker v. Whitehead*, 16 Wall., 314.

A State held all the stock of a bank. An act of the legislature required the managers to hold the assets in trust for certain creditors. The creditors assented. *Held*, that this created a trust in favor of these creditors, to carry out the trust for their benefit. If such an act has the effect to appropriate the assets of the bank to the debts to the State, leaving bill holders and other creditors in the lurch, it is repugnant to the Constitution, as impairing contract obligations. *Barings v. Dabney*, 19 Wall., 1.

When a contract is made with a municipal corporation upon the faith that taxes will be levied, legislation repealing or modifying the taxing power so as to deprive the holder of all adequate and efficacious remedy, impairs the contract, and the court will compel specific tax levies by *mandamus*. *Louisiana ex rel. Nelson v. St. Martin's Parish*, 111 U. S., 716.

Contracts made in the insurgent States during the

civil war, between residents of those States, with reference to Confederate notes as a standard of value, not in aid of rebellion, may be enforced in the National courts and the value of the contract determined by the value of the Confederate money in lawful money at the time of the making of the contract. *Effinger v. Kenney*, 115 U. S., 566.

A State law seeking to evade this rule and allow parol proof of a different parol agreement or understanding, impairs the contract. *Id.*

A legislative grant of an exclusive right or franchise to furnish gas to a municipality and its inhabitants, through pipes and mains laid in the public streets, and upon the condition of the performance of the service of the grantee, is the grant of a franchise vested in the State, and, after performance by the grantee, is a contract protected by the Constitution, but the State legislature does not part with the police power or its duty of protecting the public health, safety and morals, as these may be affected by the exercise of the franchise by such grantee. *New Orleans Gas Co. v. Louisiana Light Company*, 115 U. S., 650.

A State statute which authorizes the redemption of property sold on mortgage foreclosure, where no right of redemption previously existed, can not apply to a sale before its passage. *Barnitz v. Beverly*, 163 U. S., 118.

A charter exempted all the property of a railroad

from taxation. This included not only franchise, but real estate and rolling stock. A subsequent law taxing the franchise held void as impairing the contract of the first. *Wilmington R. R. v. Reid*, 13 Wall., 264.

In determining whether a contract was protected from impairment by the United States Constitution the Supreme Court forms an independent judgment in each case, unaffected by the State court decisions in other like cases. *Citizens' Sav. Bank v. Owensboro*, 173 U. S., 636. The Supreme Court is not bound by the decision of the State court. *McCullough v. Virginia*, 172 U. S., 102. Nor, is the Federal court obliged to change when the State court changes. *Gelpcke v. Dubuque*, 1 Wall., 175.

"The Virginia Coupon Cases."—An issue of bonds with coupons attached, under an act of the State of Virginia, provided that the coupons should be receivable "at and after maturity for all taxes, debts and demands due the State." A later act, which forbade such receipt of these coupons, was held void as impairing the obligation of the contract. *Virginia Coupon Cases* (*Poindexter v. Greenhow*, 114 U. S., 270).

An assessment of a license to be paid as condition precedent to exercising a business or trade is a tax, due or demand "within the meaning of the act of Virginia (March 30, 1871), making coupons on the bonds receivable for 'taxes, debts, dues and demands due the State.'" *Royall v. Virginia*, 116 U. S., 572.

The Supreme Court in 1881 sustained the act of Virginia of 1871, in which the coupons on the bonds of the State, issued for the refunding of her then existing bonded debt, were made receivable for taxes. By subsequent legislation the State sought to evade or impair this provision. The following are the cases in the Supreme Court in which questions affecting this coupon question have been considered. The original act passed March 30, 1871, was for refunding the public debt. It provided for the issue of bonds with coupons to two-thirds the amount of the former bonds, and making the interest coupons payable semi-annually and "receivable at and after maturity for all taxes, debts, dues and demands due the State, which shall be expressed on the face thereof." This statute proved unsatisfactory to the people of the State and the following acts were passed to embarrass or prevent effect being given to the provision making the coupons receivable for taxes: The act of March 7, 1872, making it unlawful for officers charged with the collection of taxes or other demands due the State at that time or thereafter to receive anything in payment but gold and silver coin, United States treasury notes, or the notes of National banks.

The Act of March 25, 1873, imposed a tax of 50 cents on each \$100 of the market value of the bonds, and directing that such tax be deducted from the coupons tendered in payment of taxes.

The Act of January 14, 1882, compelled the tax-

payer to pay his taxes in money when he tendered his bonds, and then he might bring a suit to establish the genuineness of the coupons. If he prevailed, he was to have his money refunded, and the coupons were to be received.

The Act of January 26, 1882, further provided that tax-collectors should receive only "gold, silver, United States notes, National bank currency and nothing else." The same act also declared that there should be no other remedy for the tax-payer, except such as provided in that act; and that no writ, injunction, *supersedeas*, *mandamus*, prohibition or other process should issue to hinder or delay the collection of revenue, etc.

The Act of Feb. 14, 1882, provided "that no writ of *mandamus*, prohibition, or any other summary process whatever shall issue in any case of the collection of revenue, or to compel the collecting officers to receive anything in payment of taxes than as provided for by acts above mentioned, in which the applicant for the process has any other remedy adequate for the protection of his individual right, claim and demand, if just.

The Act of March 15, 1884, required that all school taxes should be paid "only in lawful money of the United States."

The Act of Jan., 1886, provided that in a suit in respect to coupons tendered in payment of taxes, no expert testimony should be received, and that the bonds from which the coupons were cut should be produced,

if demanded, as a condition precedent to the right of recovery.

The revision of the Code of Virginia of May 16, 1887, made it unlawful for officers charged with collection of taxes, debts or other demands of the State to receive in payment thereof anything but gold, silver or United States or National bank notes.

On these acts, the questions arising out of these bonds were before the United States Supreme Court in various phases as follows:

1. It was held that in the "Funding Act," under which the bonds were issued, the provision that the coupons should be receivable for taxes and their acceptance and surrender of the old bonds consummated a contract between the State and the holder of the bonds and the holder of the coupons, from which without their consent, the State could not be released. *Hartman v. Greenhow*, 102 U. S., 672.

2. The subsequent enactment of the statute of March 25, 1873, taxing the bond and deducting the taxes from the coupons, impaired this contract and the owner was entitled to *mandamus* to compel the proper officer to receive the coupons in full payment of the taxes. *Id.*

3. That such *mandamus* proceedings were reviewable in the Supreme Court of the United States, the question being on the impairment by State law of this contract. *Id.*

4. After the Act of Jan. 4, 1882, which imposed

upon the officer, when *mandamus* was prayed against him, the duty to answer that he was ready to receive the coupons as soon as it should be ascertained that they were genuine, and requiring the coupon holder to first pay his taxes in money, it was held, that Sec. 4 of such act gave the coupon holder an adequate remedy, and that the obligation of his contract was not thereby impaired. *Antoni v. Greenhow*, 107 U. S., 769. Section 4 of that act gave the court power to issue *mandamus*. *Id.* Several judges dissented. This case was followed in *Moore v. Greenhow*, 114 U. S., 338.

5. It was later held by the Supreme Court that any act of the State which forbids the receipt of these coupons for taxes violates the contract and is void; that the faculty of being receivable for taxes was the essence of the contract and constituted a self-executing remedy in the hands of the coupon holders; that tender of the coupons for taxes was equivalent to a tender in money; that the coupons were not "bills of credit;" that the act of Jan. 26, 1882, requiring tax collectors, etc., to receive only gold, silver, or United States or National bank notes was void, as impairing the obligation of a contract. *Poindexter v. Greenhow*, 114 U. S., 270.

6. The suit by the holder of coupons authorized by the Act of January 26, 1882, against a tax collector upon his refusing to accept a tender of coupons, to recover back the amount paid under the protest, is no remedy at all for the breach of the contract, which required him

to receive the coupons in payment; that the coupon holder has a right to insist that he will not pay in money; and that his tender of the coupons is equivalent to payment; and he may regard the person who seizes his property for taxes after such tender as a trespasser. *Id.*

7. That the act amendatory of said Act of March 13, 1884, is also void. This last act, as stated above, compelled the coupon holder to pay the taxes, then bring suit if he chose to establish the genuineness of his bonds and to recover his money. It also forbade any suit of trespass or trespass on the case against an officer for levying on property in cases where coupons had been tendered and not received. *Id.* Four justices dissent. *Marye v. Parsons*, 114 U. S., 325.

8. The State of Virginia requires attorneys to pay a license fee to the Commissioner of Revenue as a condition precedent to practice their profession. One who tendered coupons issued under the Funding Act of 1871 is entitled to practice, and any law of the State subjecting him to criminal proceedings for so practicing after such tender, is void. *Royall v. Virginia*, 116 U. S., 572.

9. And after lawful tender of the coupons for such "separate revenue license," the person otherwise duly authorized and licensed to practice, may compel by *mandamus* the officer to receive the coupons and deliver

them to the proper official for identification. *Sands v. Edmunds*, 116 U. S., 585.

10. Where an attorney was informed against for practicing as a lawyer without having paid a revenue license, he pleaded payment partly in cash and partly in coupons cut from a bond under the provisions of the Funding Act of 1871. The commonwealth demurred to the plea. *Held*, that the demurrer admitted the facts as to bond and good tender, and showed that the case came under the ruling in *Royall v. Virginia*, 116 U. S., 572. *Royall v. Virginia*, 121 U. S., 102.

11. The proceeding under these acts for the identification and verification of these coupons tendered in payment of debts is not a suit of a civil nature so as to be removable into the Federal courts. *Stewart v. Virginia*, 117 U. S., 612.

12. A suit in equity was brought in the Circuit Court of the United States against officers of the State of Virginia, as nominal defendants having no interest in the subject-matter and defending only as representing the State, the relief prayed being that the defendants do certain acts which, when done, would constitute the performance of a contract of the State. The suit is against the State within the 11th Amendment and, that as such, it can not be brought in the Federal courts; and for violation of the injunction granted in it, the party arrested for contempt of court will be released on

habeas corpus by the Supreme Court. *In re Ayres*, 123 U. S., 443.

13. In the same case held that if the holder of coupons sells them to a purchaser, agreeing with him that the State will receive them for taxes, the refusal of the State constitutes no injury to him, for which he can sue the State. Even if it were suable, it can not be sued by the vendor of the coupons. *Id.*

14. That no suit in a Federal court can be brought against the State of Virginia or against her executive officers to control their official functions as agents of the State; and that any lawful holder of a tax-receivable coupon, who tenders the same for taxes and continues to hold it, is entitled to be free from molestation in person or goods on account of such taxes, etc., and to enjoin or redress such molestation. *McGahey v. Virginia*, 135 U. S., 662.

15. That the Act of January 26, 1886, compelling the taxpayer tendering the coupon to produce the original bond at the time of offer, is an unreasonable condition often impossible of performance, onerous, and often having the effect of destroying the value of the coupon, and is therefore void. *Id.*

16. That the provision of that act prohibiting expert testimony in establishing the genuineness of coupons is in like manner void. *Id.*

17. That it is questionable whether the Act of March 17, 1887, requiring a suit to be brought against the tax-

payer who tenders payment, is not a law impairing the obligation of the contract. *Id.*

18. That when a judgment is recovered for taxes and costs of suit the judgment debtor may tender coupons in payment. *Ellett v. Virginia*, 135 U. S., 662.

19. That the special license tax imposed by the statute of Virginia for the right to offer tax-receivable coupons for sale, was void as impairing their negotiability. *Cuthbert v. Virginia*, 135 U. S., 662.

20. That an unreasonably short statute of limitations works an impairment of the contract. *Brown's Case*, 135 U. S., 662.

21. That the State may require a license to sell liquors to be paid in lawful money, as that is not a tax; and such law does not impair the obligation of the contract. *Hucless v. Childrey*, 135 U. S., 662.

22. That the statute requiring the school tax to be paid in lawful money is not void, as impairing the tax-receivable coupon statute, because when the bond issue of 1871 was enacted, a prior statute of 1869 had provided for the school fund as a trust fund applicable in money to the support of free public schools. *Vashon v. Greenhow*, 135 U. S., 552, 716.

23. Finally, after many decisions of the highest court of Virginia, that the Act of 1871, called the "Funding Act" was valid, and after many decisions of the Supreme Court to the same effect, the Virginia court decided in 1894 that the "Funding Act" was

void. The Supreme Court of the United States held that it is not bound by this decision, and reverses it, holding the act valid, and adhering to the former decisions. *McCullough v. Virginia*, 172 U. S., 102.

Exclusive franchise.—The grant of “the exclusive privilege of erecting and establishing gas works in the city of Louisville during the continuance of this charter and of vending coal-gas lights and supplying the city and citizens with gas by means of public works,” etc., held to be irrevocable and not amendable. *Louisville Gas Co. v. Citizens’ Gas Co.*, 115 U. S., 683.

The exclusive right or franchise to supply water to a city and its inhabitants through pipes and mains laid in the public streets, is violated by a grant to an individual in the municipality of the right to supply his premises with water by means of pipes laid through the streets. *New Orleans Water Works Co. v. Rivers*, 115 U. S., 674.

State laws impairing the obligations of contract; general principles.—Laws of a State, which impair contract obligations, are null and void to that extent; and courts in enforcing such contracts pursue the same course as though such void laws had not been passed. *Louisiana v. Pilsbury*, 105 U. S., 278.

State statutes in force when the contract is made, limiting the creditor’s rights to enforce his claims, are not void as impairing the obligations of the contract. *Denny v. Bennett*, 128 U. S., 489.

Whatever belongs merely to the remedy may be altered by the State so that it does not impair the obligation. *Hill v. Merchants, etc., Co.*, 134 U. S., 515. But if it so affects the obligation of the contract, it is void. *Seibert v. United States*, 122 U. S., 284.

The Constitution of a State is a law within the meaning of this prohibition against the impairing of contract obligations. *Miss., etc., R. Co. v. McClure*, 10 Wall., 511; *Mech. and Traders B'k v. Thomas*, 18 How., 384; *White v. Hart*, 13 Wall., 646; *Delmas v. Merchants' Mut. Ins. Co.*, 14 Wall., 661; *Gunn v. Barry*, 15 Wall., 610; *Davis v. Gray*, 16 Wall., 203; *Fisk v. Police Jury*, 116 U. S., 131; *Bier v. McGehee*, 148 U. S., 137.

The Constitution of Louisiana of 1879 abolishing monopolies was held void as to a previous contract giving exclusive privileges. *St. Tammany Waterworks v. New Orleans Water Works*, 120 U. S., 64.

A contract, void when made, by the Constitution as then expounded by the highest court in the State, can not be impaired by subsequent action of the legislature or decision of the judiciary. *Havemeyer v. Iowa County*, 3 Wall., 294; *Gelpcke v. Dubuque*, 1 Wall., 175; *Chicago v. Sheldon*, 9 Wall., 50; *Olcott v. The Supervisors*, 16 Wall., 678; *Memphis v. United States*, 97 U. S., 293.

Laws impairing obligations of contracts, but passed by Texas before her admission into the Union, are not

affected by this prohibition. *League v. DeYoung*, 11 How., 185; *Herman v. Phalen*, 14 How., 79.

This provision of the Constitution does not extend to a State law enacted before the Constitution went into operation. *Owings v. Speed*, 5 Wheat., 420.

A State Constitution is not a contract within the meaning of this article of the Constitution. *Church v. Kelsey*, 121 U. S., 282. The amendment of a Constitution, so as to allow a court of equity to try a suit by the holder of an equitable interest against the holder of the legal title, impairs no contract obligation. *Id.*

This provision of the Constitution necessarily refers to a law made after the particular contract in suit. *Lehigh Water Co. v. Easton*, 121 U. S., 388.

Laws affecting remedies.—The remedy subsisting in a State, when and where a contract is made, is a part of its obligation, and any subsequent law which so affects the remedy as to impair and lessen the value of the contract is forbidden by the Constitution. *Seibert v. Lewis*, 122 U. S., 284; *Bronson v. Kinzie*, 1 How., 311; *Edwards v. Kearzey*, 96 U. S., 595.

The legislature can not take away existing remedies, though it may modify or substitute others for them, equally sufficient. *Walker v. Whitehead*, 16 Wall., 314; *Fullerton v. Bank*, U. S., 1 Pet., 604; *Terry v. Anderson*, 95 U. S., 628; *Cairo, etc., R. Co. v. Hecht*, 95 id., 168; *Tennessee v. Sneed*, 96 U. S., 69; *Memphis*

v. *United States*, 97 U. S., 293; *Memphis v. Brown*, 97 U. S., 300.

When a State, in modifying remedies to enforce a contract, does so in a way to impair substantial rights, the attempted modification is within the prohibition and to that extent void. *White v. Hart*, 13 Wall., 647.

Where a statute was in force, when the bonds of a municipality were issued, authorizing the levy of a tax to pay interest and principal on the bonds, the legislature can not repeal it so far as such bonds are concerned. *Van Hoffman v. Quincy*, 4 Wall., 535; *Galena v. Amy*, 5 Wall., 705; *Wolff v. New Orleans*, 103 U. S., 358; *Rolls County v. United States*, 105 U. S., 733; *Louisiana v. St. Martin's Parish*, 111 U. S., 716.

An act of the legislature of the State of Texas for the relief of railroad companies indebted to the State, provided that State treasury warrants drawn by State authority should be received in payment of certain dues to the State. The repeal of this act was held to impair the obligation of a contract. *Houston, etc., R. Co. v. Texas*, 177 U. S., 66.

An act of Pennsylvania of June 30, 1885, assessed a tax of three mills on the dollar to be levied on moneys, loans, stocks, moneyed capital, etc., in the hands of individual citizens of that State, and required the treasurer of private corporations, incorporated under other States and doing business in Pennsylvania, when paying interest upon its bonds, etc., held by residents of

that State, to assess a tax upon it and report to the Auditor General of the State, and to pay the tax so assessed and collected into the State treasury. *Held*, that this act impaired the obligation of an earlier act made with a railroad company and was invalid. *New York, Lake Erie & Western Ry. Co. v. Pennsylvania*, 153 U. S., 628.

A contract by a State to receive its own warrants in payment for dues to the State would be impaired by a subsequent statute repudiating the first. *Houston, etc., Ry. Co. v. Texas*, 177 U. S., 66.

A party, whose interests are affected by a State statute, can not set up that the statute impairs the obligation of a contract to which he is not a party. *Williams v. Eggleston*, 170 U. S., 304.

Laches and acquiescence may waive the right to claim that a State law impairs the obligation of a contract. *Pierce v. Somerset R'y Co.*, 171 U. S., 641.

The question whether the right to claim that a State law impairs a contract had been lost by laches is not a "Federal question." *Eustis v. Bolles*, 150 U. S., 361; *Rutland R. Co. v. Cent. Vt. R'y Co.*, 159 U. S., 630; *Seneca Nation v. Christy*, 162 U. S., 283.

The act of the legislature of Ohio imposed a toll upon passengers in mail stage coaches over the Cumberland road, to the exclusion of all other passengers, does in effect exact a toll of mail coaches, and thus imposes upon the United States a part of the burden of support-

ing the Cumberland road, contrary to the compact between the State of Ohio and the United States. *Neil v. Ohio*, 3 How., 720.

Implied contracts.—The prohibition against State laws impairing the obligations of contracts, applies as well to implied as to express contracts. *Fish v. Jefferson Police Jury*, 116 U. S., 131. A law which attaches a fixed compensation to a public office during the whole term of one legally filling it and performing the duties, raises an implied obligation to pay for the services at the fixed rate, to be enforced by the remedies the law then gave; and a change in the State Constitution which takes away the powers of taxation to pay such officer so as to debar him from means of collecting his compensation, falls within the constitutional inhibition. *Fish v. Jefferson Police Jury*, 116 U. S., 132.

Instances in which the State legislation has been held not to impair the obligation of contracts.—Under a law allowing imprisonment for debt, H gave bond with sureties to remain a true prisoner until lawfully discharged. An act of the legislature discharging such prisoners did not impair the obligation of a contract. That a debtor shall be imprisoned for failure to pay is no part of the contract. *Mason v. Haile*, 12 Wheat., 373; *Beers v. Haughton*, 9 Pet., 329.

A State law which makes valid a contract that was void does not impair the obligation of a contract. *Satterlee v. Matthewson*, 2 Pet., 380.

A patent from a State granting land does not amount to a contract that the patentee and his assigns shall enjoy the land free from all legislative regulations in violation of the Constitution of the State; but only that the State will not impair the force of the grant; and a later State law repugnant to the State Constitution does not impair the obligation of a contract. *Jackson v. Lampshire*, 3 Pet., 280.

A bank in Rhode Island was chartered, but the charter was silent as to taxation. A later law imposed a tax on the capital stock, and was held not to impair obligation, etc. *Providence Bank v. Billings*, 4 Pet., 514.

The obligations of the contract are not impaired by the dissolution of a bank: 1. Because its creditors contracted with reference to the possibility of such dissolution; and, 2, because the obligations survive and may be prosecuted against its property; hence a State may provide for the dissolution of a corporation, and the disposition of its assets for the benefit of creditors. *Mumma v. Potomac Company*, 8 Pet., 281.

There existed a ferry across the Charles river, and its profits belonged to Harvard College, granted to it in 1650. The State created a corporation in 1828, empowered it to build a bridge and take tolls. The charter contained no express words to the effect that it would not authorize another bridge to be built to the injury of the corporators. *Held*, that another corpora-

tion to erect and maintain a bridge to be free after six years so near the first as virtually to deprive it of all tolls, did not impair the obligation of a contract. *Charles River Bridge v. Warren Bridge*, 11 Pet., 420.

Under a statute of Virginia permitting courts to grant ferry license but making it unlawful to grant any license for a ferry within one-half mile of any other ferry, a ferry license is not a contract, and subsequent legislation giving right to maintain ferries within such distance is valid. *Williams v. Wingo*, 179 U. S., —.

The lands set apart for a university in Ohio, by Congress, were given by the State to a corporation, with power to lease the same at certain rents and to increase the same from time to time, to the amount of taxes imposed on similar property. The lands were to be forever exempt from taxation. Afterwards a law authorized the trustees to sell the land in fee simple. *Held*, that they could after sale be taxed. The purchasers could not claim such exemption. *Armstrong v. Treasurer of Athens Co.*, 16 Pet., 281.

The State of Maryland passed a law to subscribe \$1,000,000 to the stock of the Baltimore and Ohio railroad company, with a proviso in the act, that if the road should not be so located to pass through certain towns in the county of Washington, the company should forfeit \$1,000,000 to the State for the use of that county. By a subsequent law the State released this claim of \$1,000,000, the road having been located so as

not to pass through those towns. *Held*, that this was not a contract with Washington county, but a mere penalty which the State could release, and that the release was valid, and nothing was due to the county. *Maryland v. Baltimore & Ohio R. R. Co.*, 3 How., 534.

A corporation was chartered to build a bridge and take tolls for passing the same. A later law provided for taking it as a public highway upon just compensation to the corporation. This did not impair the obligation of a contract. *West River Bridge Co. v. Dix*, 6 How., 507.

A retrospective law, which enables banking corporations to sue in their own names on notes payable to their cashiers, impairs no contract obligation. *Crawford v. Branch Bank of Mobile*, 7 How., 279.

A law prohibiting any bank from transferring by indorsement or otherwise, any note, bill receivable or other evidence of debt, impairs the obligation of a contract between the State and an existing bank, empowered by its charter to acquire and dispose of goods, chattels and effects of every kind, and to discount bills and notes. *Planters' Bank of Mississippi v. Sharp*, 6 How., 301.

A clause in the charter of a railroad corporation enabled it to have land condemned to its use on payment of valuation assessed by an inquisition. The legislature set aside an inquisition found in 1836, confirmed in 1837, but under which the company had made no

payment or tender until after passage of act setting it aside. *Held*, no impairment of contract. *Baltimore, etc., R. Co. v. Nesbit*, 10 How., 395.

The appointment to an office with fixed term and compensation under existing law is not a contract. A law may be passed abolishing the office and changing compensation, without impairing contract obligation. *Butler v. Pennsylvania*, 10 How., 402. A contract for services by a *commissioner* is a contract, which can not be impaired by State legislation. *Hall v. Wisconsin*, 103 U. S., 5. See *ante*, p. 174.

A charter granted by a State provided that the State would not for thirty years "allow any other railroad to be constructed between the city of Richmond and the city of Washington," "the probable effect of which would be to diminish the number of passengers traveling between the one city and the other," "or to compel the company, in order to retain such passengers to reduce the passage money." *Held*, that the stipulation construed strictly against the company, did not prevent the chartering of another road, to carry merchandise exclusively. *Richmond, etc., R. Co. v. Louisa R. R. Co.*, 13 How., 71.

A State, if not restrained by its Constitution, may make a binding contract with a banking corporation, in its charter, that no more than a certain amount of taxes shall be levied on its property for a term of years; and, in this case, it was held that the charter

provisions did amount to a contract. *State Bank of Ohio, Piqua Branch, v. Knoop*, 16 How., 369. The fact that after this act was passed declaring that only such taxes should be levied, and after the later act, which impaired the obligation of the contract, a constitution of the State was adopted providing for the taxation on a more onerous basis of the bank thus protected by its charter made no difference. A State can not, by a change of its Constitution, release itself from contracts lawfully made under the Constitution as existing when the contracts were made. *Dodge v. Woolsey*, 18 How., 331.

A permission by a State to be sued is not a contract whose obligations were impaired by the passage of a subsequent law imposing conditions to the bringing or maintaining of such suits. *Beers v. Arkansas*, 20 How., 527.

A railroad charter authorized the commissioners of a county through which the railroad passed to subscribe for stock and issue bonds when and after a majority of the voters of the county had so voted. An election was held and a majority vote was that the subscription should be made. Before the subscription had been made, a new constitution went into effect prohibiting counties from making such subscriptions. *Held*, that the vote to subscribe did not amount to a contract, which was impaired by the constitutional pro-

hibition. *Aspinwall v. Commissioners of Daviess Co.*, 22 How., 364.

The legislature of Wisconsin authorized the town of Sheboygan to subscribe aid to a railroad, and provided that the taxes necessary to raise money to pay the bonds issued for such subscription should be levied exclusively on real estate. *Held*, that a prior act, by which no such distinction was made as to taxation constituted no contract with the bond holders against exempting personal property from taxation for that purpose. *Gilman v. Sheboygan*, 2 Black., 510.

The State of Indiana contracted debts for the benefit of the Wabash and Erie Canal company, pledging the canal and its revenues for the payment of the loans, and making them a lien thereon, according to the priority of the statutes which authorized the loans. These loans and liens were contracts, and it was not in the power of the legislature to impair them. Acts of the legislature submitting propositions, for settlement with creditors, leaving it voluntarily with them to settle or not, do not impair. *Trustees Wabash Canal Co. v. Beers*, 2 Black., 448.

The legislature of New Jersey gave a power to certain bridge commissioners to contract for a bridge over the Hackensack river, and by the same statute enacted that "the contract should be valid and binding on the parties contracting as well as on the State of New Jersey," and that it should not be lawful for any per-

son to erect any other bridge over or across the said river for ninety-nine years. This is a contract whose obligation the State can not impair; but a railway viaduct by which cars and engines can be run across said river, the only road-way being the iron rails, laid on ties, and on which it is impossible for man or beast to cross is not a bridge within the meaning of the contract. *Bridge Proprietors v. Hoboken Company*, 1 Wall., 116.

Where a State grants no exclusive privilege to one company which it incorporates, it impairs no contract by incorporating a second one, which it largely manages and profits by to the injury of the first. *Turnpike Co. v. State of Maryland*, 3 Wall., 210.

A statute of a State releasing "whatever interest" in certain real estate the State might have "rightfully," is not a law impairing the obligation of a contract, which had been previously made with an agent of the State, by which he acquired an interest in half of the lot and undertook to sell and convey the whole of it. The statute would only apply to the remaining half owned by the State. *Mulligan v. Corbins*, 7 Wall., 487.

No question can arise as to a law impairing the obligation of a contract, when the law was itself in force when the contract was made. *Railroad Co. v. McClure*, 10 Wall., 511.

A statute which requires the holder of a tax certifi-

cate made before its passage to give notice to an occupant of the land, if there be one, before he takes his tax deed, does not impair the obligation of the contract evidenced by the certificate. *Curtis v. Whitney*, 13 Wall., 68.

An act incorporated a college to be known by the name of the Jefferson College in C——; and declared the act should be the “inviolable constitution of the College forever,” “not to be altered by any ordinance or law of the trustees, or in any other manner than by an act of the legislature.” A subsequent law, with the consent of the trustees, authorized the removal of the college and its consolidation with another on certain terms. *Held*, that no law impairing obligation of any contract had been passed. *Pennsylvania College Cases*, 13 Wall., 190.

A law offering all persons and corporations to be formed for the purpose a bounty on salt manufactured, and exemption from taxation of the property used for the purpose, is not a contract in such sense that it can not be repealed. *Salt Company v. East Saginaw*, 13 Wall., 373.

This provision of the Constitution, that “no State shall pass any law impairing the obligation of contracts” does not forbid a State from legislating, to reduce the rate of interest on judgment previously rendered, as the allowance of such interest is not by con-

tract but is allowed or not in the State's discretion. *Morley v. Lake Shore and M. R'y Co.*, 146 U. S., 162.

Removal of county seat.—An act of Ohio legislature that a county seat should be permanently established in a certain place does not constitute a contract, and there is no stipulation that the county seat shall not be changed. *Newton v. Mahoning Co.*, 100 U. S., 548.

As to stopping at stations.—The railroad commissioner of Connecticut *consented* that a railroad company might discontinue one of its stations. A subsequent law required the company to stop its trains at that station, and was held not to impair a contract. *New Haven, etc., Co. v. Hamersley*, 104 U. S., 1.

The Granger cases.—The right of a State to reasonably limit the amount of charges by a railroad company for the transportation of persons and property within its jurisdiction, can not be granted away by its legislature unless by words of positive grant, or words equivalent in law. A grant of a charter with the words "from time to time to fix, regulate and revise the tolls and charges by them to be received for transportation" does not deprive the State of its power to act upon the reasonableness of the tolls and charges so fixed and regulated. *Stone v. Farmers' Loan & Trust Co.*, 116 U. S., 307; *Railroad Co. v. Maryland*, 21 Wall., 456; *C., B. & Q. R. R. Co. v. Iowa*, 94 U. S., 164; *Peck v. Chic. & N. W. Ry.*, 94 U. S., 164; *Winnona & St. Peters' R. R. Co. v. Blake*, 94 U. S., 180;

Ruggles v. Illinois, 108 U. S., 526. See *Munn v. Illinois*, 94 U. S., 114. See *post*, p. 350.

Set-offs allowed.—A State law authorizing a debtor of a municipality to procure the obligations of the municipality and set them off against his own debt, is not an impairment of the obligation to the creditors of the corporation, but a legitimate application of the doctrine of set-off. *Amy v. Shelby Co. Taxing District*, 114 U. S., 387.

Excluding from professions not impairment.—A statute forbidding persons to practice medicine, who have been convicted of felony, does not impair obligation of contracts, nor is it *ex post facto*. *Hawker v. New York*, 170 U. S., 189.

The contract of marriage is not a contract within the meaning of the provision of the Constitution prohibiting States from impairing the obligations of contracts, as that clause has never been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. *Hunt v. Hunt*, 131 U. S., clxv, Appendix.

Compromises of municipal debts.—An act of Tennessee legislature of March 23, 1883, authorized municipal corporations to compromise their debts by the issue of new bonds at the rate of 50 per cent. of the principal and past due interest; and made such new bonds and matured coupons receivable in payment of

back taxes at the same rate as the bonds known as "Flippin Bonds." *Held*, not to divest the owners of unpreferred debts of the city of Memphis of any rights conferred by previous legislation. *Amy v. Shelby Taxing District*, 114 U. S., 387.

Contracts ultra vires.—A contract with a city void because *ultra vires*, and having been repudiated, can not be impaired by subsequent State legislation. *New Orleans v. New Orleans Water Works Co.*, 42 U. S., 79.

The charter of a municipal corporation is not a contract with the State. *Id.*

A contract with a municipal corporation, granting to a contractor the sole privilege of supplying the municipality with water from a designated source for a term of years is not impaired by a grant to another party of a privilege to supply water from a different source. *Stein v. Bienville Water Supply Co.*, 141 U. S., 67.

While a State can not be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts may be judicially resisted; but can not be sued by one of its own citizens in a circuit court of the United States, without its consent. *Hans v. Louisiana*, 134 U. S., 1.

A statute of Texas provided for sale of the public lands. A made application for survey of part of them and paid fees for filing and recording the same. A

later statute withdrew the lands from sale. *Held*, that A acquired no such vested interest as was impaired by the later act. *Campbell v. Wade*, 132 U. S., 34.

A provision of the Constitution of West Virginia that the property of a citizen should not be sold under final process upon judgments, etc., theretofore rendered because of acts done according to the usages of war, during the rebellion, does not impair the obligation of a contract. *Freeland v. Williams*, 131 U. S., 405.

Removal of college.—The citizens of Millersburg, Ky., raised a fund for the establishment of a college institute at that place, and invited the Kentucky annual conference to take charge of it when established. The invitation was accepted and the legislature incorporated the act, with a reserved right therein to amend or repeal. Later another conference gave power to remove the institution elsewhere. *Held*, not to impair contract obligations. *Bryan v. Board of Education*, 151 U. S., 639. See *ante*, p. 182.

The Act of Louisiana of July 12, 1888, which authorized the enforcement of contracts, by *mandamus* without jury, by corporations with municipal corporations with reference to paving and repairing of streets, highways and bridges, etc., simply gives an additional remedy to the party entitled to performance, without impairing any substantial right of the other party, and does not impair the obligation of the contract

sought to be enforced. *New Orleans, etc., R. R. Co. v. Louisiana*, 157 U. S., 219.

Certain bonds of North Carolina were issued while the Constitution of 1868 was in force. That Constitution provided that the Supreme Court of the State might hear claims, but that its decision should be merely recommendatory. The repeal of this act which took away this jurisdiction held not to impair the obligation of a contract. *Baltzer v. North Carolina*, 161 U. S., 240.

Exemption from taxation, when not a contract.—A statute of a State making liable every railroad corporation for property injured by fire from locomotive engines does not impair contract obligations or contravene other constitutional inhibitions. *St. Louis, etc., R'y Co. v. Mathews*, 165 U. S., 1.

A State statute exempting the hall of the Grand Lodge of F. A. M. from taxation, so long as so occupied, is not a contract and can be repealed. *Grand Lodge, etc., v. New Orleans*, 166 U. S., 143.

A New Jersey statute enacted that a "poor farm" belonging to the city of New Brunswick and situate in the town of North Brunswick, should be subject to taxation in that town so long as it remained in its limits. A subsequent statute enacted that this kind of property owned by cities, used for charitable purposes, should be exempt from all taxation. The second statute worked a repeal of the first, and the first was not a

contract. The town had no vested right to continue this taxation of the city of property within its limits. *Williamson v. New Jersey*, 130 U. S., 189.

A corporation authorized to construct dams, after paying for rights of owners above, may still be required, under Massachusetts Constitution, to construct fishways. *Holyoke Co. v. Lyman*, 15 Wall., 500.

Where a trust company was incorporated and by the terms of its charter not to be taxed at a higher rate than banking institutions, *held*, that the rate of its taxation might be increased when that of banking institutions was increased. *Ohio Life Ins. Co. v. De-balt*, 16 How., 416.

A provision in an act authorizing a railroad company that it shall pay a certain tax, does not create a contract that no higher tax shall be laid. *Delaware R. R. Tax*, 18 Wall., 206.

A law authorizing foreign corporations to build part of their road into a State, and be taxed pro rata on the stock, on the basis of the cost of construction in the State; *held*, not to be a surrender or limitation on taxing power. *Erie R. Co. v. Pennsylvania*, 21 Wall., 492.

A tax upon a railroad with reference to itself does not apply to lands granted to the road as inducement to build and in the grant exempted from taxation. *Tucker v. Ferguson*, 22 Wall., 527.

A charter exemption of capital stock embraces the

individual shares. *Tennessee v. Whitworth*, 117 U. S., 129; *Trask v. Maguire*, 18 Wall., 391. But not of other property of the corporation. *Id.* And a pledge of the faith of the State not to tax a bank beyond a certain amount or rate, if it would perform certain conditions, protects the shareholders from any tax upon them by reason of their stock. *Gordon v. Appeal Tax Court*, 3 How., 133.

Exemption of capital stock is not equivalent to the exemption of the property into which it is converted, where another provision is made exempting the road and its fixtures for a period of time. *Memphis, etc., R. Co. v. Gaines*, 97 U. S., 697.

The statute of Missouri of 1882 exempted the railroad from taxation until it was completed and put in operation and had declared a dividend, not longer than two years after completion. The State ordinance of 1865 imposed a tax of 10% of its gross earnings before the road was completed. *Held*, to impair the contract and tax illegal. *Pac. R. R. Co. v. Maguire*, 20 Wall., 36.

Where the charter of a railroad company forever exempts capital stock and dividends, this does not exempt lands granted to the company, and exempt, by the State, while they remained unsold. *St. Louis, Iron M., etc., R. Co. v. Loftin*, 98 U. S., 559; *Memphis, etc., R. Co. v. Loftin*, 105 U. S., 258.

The taxing power is never presumed to be relin-

quished. *Providence Bank v. Billings*, 4 Peters., 514.

Nor, will a contract to exempt be implied from the imposing of a license tax. *Memphis Gas Light Co. v. Shelby Co. Taxing District*, 109 U. S., 398.

Nor, can it be inferred from omission to tax in previous years after the exemption has expired. *Vicksburg, etc., R. Co. v. Dennis*, 116 U. S., 665. An exemption for ten years after completion held not to work an exemption before completion. *Id.* A statute exempting a hospital from taxes is not a contract for perpetual exemption. *Rector, etc., v. County of Philadelphia*, 24 How., 300.

Admitting foreign corporations to do business in a State is not a contract.—A judgment declaring a forfeiture of the permission to a foreign corporation to do business in a State, other than that of its creation, for violation of the statute under which the permit was given, does not render such statute a violation of a contract, as a State may admit or refuse to admit such corporation, and prescribe conditions and terms of admission. *Waters-Pierce Oil Co. v. Texas*, 177 U. S., 28.

Repeal of statutes when not an impairment.—The repeal by a State of a grant of power to its courts to audit claims against the State does not violate the obligation of contracts that were entered into while the power existed. *Baltzer v. North Carolina*, 161 U. S., 240.

The grants by the territory of Minnesota to the St. Anthony Falls Water Power Company were not impaired by the acts relating to the Saint Paul public water works, as no contract rights were granted paramount to the right of the public to divert water for public use, and the Federal power of regulating navigation and commerce. *St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners*, 168 U. S., 349.

The right given a judgment creditor in Tennessee prior to 1879, to seize the rents and profits of property belonging to the wife of his debtor was not as to future profits either a vested or contract right and could be taken away by legislative act. *Baker's Ex'rs v. Kilgore*, 145 U. S., 487.

A statute of Kentucky contained a clause that the legislature might repeal or amend charters, unless a contrary intent were therein plainly expressed. While this was part of the law, a bank was chartered, under a banking law, which fixed a stated rate of taxation on stock and surplus and provided that if banks shall consent thereto and waive all rights under acts of Congress and agree to pay such taxes as the act should provide they should be exempt from all other taxes so long as said tax should be paid, during the charter's life. *Held*, that the acceptance of a charter, while this act was in force, did not constitute a contract whose obligation was impaired by a subsequent change in the tax

laws imposing additional taxation. *Citizens Sav. Bank of Owensboro v. City of Owensboro*, 173 U. S., 636.

A railroad company's right to take lands, so long as it is unexecuted, except by filing a map of location, is not vested so as to make condemnation by the States for other purposes an impairment of a contract. *Adirondack R. Co. v. New York*, 176 U. S., 335.

The provisions of the Constitution of West Virginia of 1879, that the property of a citizen of the State should not "be seized or sold under final process issued upon judgments or decrees theretofore rendered, or otherwise, because of any act done according to the usages of civilized warfare in the prosecution of the war of the rebellion by either of the parties, does not impair the obligation of contract when applied to a judgment previously obtained founded on *tort*, committed as an act of public war. *Freeland v. Williams*, 131 U. S., 405.

State may enact divorce laws.—The provision of the Constitution to prohibit States from impairing contracts, embraces only contracts respecting property or some object of value, and conferring rights enforceable in courts of justice. States may pass laws regulating divorce, liberating one party from the marriage contract, which has been broken by the other. *Hunt v. Hunt*, 131 clxiv, Appendix, Dartmouth College, 4 Wheat., 629.

Void contract not protected by this clause.—Where

a contract between a city was void as being *ultra vires*, and it has been repudiated by the city, the repeal of a law under which taxes were set off to be paid to the contracting party, is not an impairment of the contract, as there was no valid contract in existence to be impaired by such State legislation; nor does it deprive the other party of property without due process of law. *New Orleans v. New Orleans Water Works Co.*, 142 U. S., 79.

Impairment of contract by passing statute of limitations.—A statute of limitations may be passed limiting the time in which an action may be brought upon a pre-existing contract, provided it leave a reasonable time after the statute is passed for the suit to be commenced, before the statute bars the right. *Mitchell v. Clark*, 110 U. S., 633; *Hart v. Lamphire*, 5 Pet., 457; *Hawkins v. Barney*, 5 Pet., 457; *Sohn v. Waterson*, 17 Wall., 596; *Terry v. Anderson*, 95 U. S., 628; *Koshkonong v. Burton*, 104 U. S., 668; *Sturges v. Crowninshield*, 4 Wheat., 122. See *ante*, p. 168.

A statute of a State limiting the time in which actions may be commenced does not impair the obligation of a pre-existing contract, if it gives a reasonable time in which to commence the action after the passage of the statute. *Wheeler v. Jackson*, 137 U. S., 245; *McFarland v. Jackson*, 137 U. S., 258. Time may be shortened from previous law, but a reasonable time

must be left, in which an action upon a previous contract right may be commenced. *Id.*

A right of action accrued in 1851. In 1859 a statute was passed barring all actions of a certain kind "not commenced within two years next after the cause of action accrued." *Held*, that the cause of action began to run from the date of the statute of 1859, and not as the statute seemed literally to mean. *Sohn v. Waterson*, 17 Wall., 596.

A statute of New York, fixing a period of limitation upon actions or special proceedings to compel delivery of a lease upon any sale for taxes, etc., made more than eight years prior to date of the act, unless commenced within six months, does not impair the obligation of a contract. *Wheeler v. Jackson*, 137 U. S., 245.

How far State bankruptcy or insolvent laws impair the obligations of a contract.—An act of a State legislature which discharges a debtor from all liability for debts contracted before its passage on his surrendering his property for the benefit of his creditors, impairs the obligation of a contract. *Farmers', etc., Bank v. Smith*, 6 Wheat., 131.

A State insolvent law does not impair the obligation of future contracts between its own citizens. But it can not affect the rights of citizens of other States. *Ogden v. Saunders*, 12 Wheat., 213.

A State may pass a bankrupt act when there is no act of Congress conflicting, if it do not impair the ob-

ligation of a contract. An act of New York (which liberated the person of the debtor and discharged him from all liability) held such an impairment. *Sturges v. Crowninshield*, 4 Wheat., 122.

But if prospective and operative only on future contracts such laws are valid. *Ogden v. Saunders*, 12 Wheat., 215. Following *Sturges v. Crowninshield*, it was held that a discharge given the bankrupt by a State insolvency or bankrupt law could not be pleaded in bar against a foreign debtor (*McMillan v. McNeill*, 4 Wheat., 212), as the law is inoperative as to a non-resident creditor. *Suydam v. Broadnax*, 14 Pet., 75. Nor, can a suit pending in a Federal court by a citizen of another State be abated on the plea of such State bankruptcy proceedings. *Baldwin v. Hale*, 1 Wall., 223; see *Cook v. Moffat*, 5 How., 925, which holds that the contract can be sued on in another State.

Statutes limiting the right of the creditor to enforce his claims against the property of the debtor are part of all contracts made after they take effect, and do not impair the obligations of contracts of which they are a part. *Denny v. Bennett*, 128 U. S., 489.

The inhibition of the Constitution is wholly prospective. The States may legislate as to contracts thereafter made, as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effect. *Edwards v. Kearzey*, 96 U. S., 595.

Certificates of discharge from debts granted by State laws can not be pleaded in bar of actions brought in Federal courts by citizens of other States or of any other State than that where the discharge was obtained, unless it appears that the plaintiff proved his debts against the defendant's estate in insolvency, or in some manner became a party to the proceedings, because such laws have no extra territorial operation. *Gilman v. Lockwood*, 4 Wall., 409.

But where the non-resident creditor has voluntarily appeared in the State bankruptcy proceedings with intent to waive his extra territorial immunity, he is bound by the proceedings and as against him they are a complete discharge. *Id.*; *Clay v. Smith*, 3 Pet., 411. See *ante*, p. 100.

PROHIBITION ON STATES FROM LAYING IMPOSTS OR
DUTIES.

SECTION 10. "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

What are duties and imports or exports?—A State law requiring an importer to take out a license and pay

fifty dollars, before he should be permitted to sell a package of imported goods, is in conflict with the above provision, and, also, with the clause giving Congress power to regulate commerce. *Brown v. Maryland*, 12 Wheat., 419. A tax on the sale is a tax on the article itself. *Id.*, 435.

The term "import" as used in the above clause, does not refer to articles imported from one State into another, but only to articles imported from foreign countries. Hence, a uniform tax imposed by a State on all sales made in it, whether by a citizen of that State or another State, does not violate this clause of the Constitution. *Woodruff v. Parham*, 8 Wall., 123; *Brown v. Houston*, 114 U. S., 622.

Where the mode of collecting the tax on articles brought from another State is different from the mode of collecting taxes on domestic articles, but the amount is the same, this is not a fatal discrimination, and the local tax law is not void. *Hinson v. Lott*, 8 Wall., 148.

A statute of Pennsylvania of 1853, modified by that of April 9, 1859, required every auctioneer to collect and pay into the State treasury a tax on his sales. This, when applied to sales in the original packages, by him sold for the importer, is void as a tax on imports and as a regulation of commerce. *Cook v. Pennsylvania*, 97 U. S., 566.

The words "inspection laws," "imposts" and "ex-

ports," as used in this clause have exclusive reference to property, not to immigrants; and a tax on every alien passenger coming to a port is a regulation of foreign commerce and void. *People v. Compagnie Generale Transatlantique*, 107 U. S., 59. See, *ante*, p. 40.

Goods imported from a foreign country, upon which duties have been paid, are not subject to State taxation while remaining in the original packages, unbroken and unsold, whether the tax is imposed on the goods as imports or a part of the property of the importer. The goods are not incorporated into the general mass of property of the State till they have passed from the control of the importer. *Low v. Austin*, 13 Wall., 29.

The ordinance of Mobile required merchants to pay a tax of one-half of one per cent. on the gross amount of their sales. Contracts for the purchase of cargoes of foreign merchandise before or after the arrival in the bay of Mobile, where the goods are not to be at the risk of the purchaser until delivered to him in the bay, do not constitute the purchaser "an importer," and he is liable to the local tax on selling such goods. *Waring v. The Mayor*, 8 Wall., 110.

The statute of Louisiana providing for inspection of coal, making it compulsory upon all persons selling coal or coke in the barge to have the same inspected and gauged, according to the provisions of the act, is not a regulation of commerce, nor an unconstitutional discrimination between the coal of different states coming

into Louisiana. *Pittsburg & Southern Coal Company v. Louisiana*, 156 U. S., 590.

"Inspection laws are of a more equivocal nature; and it is obvious that the Constitution had viewed that subject with much solicitude. They must combine municipal and commercial regulations; and while the power over the subject is yielded to the States, for the above reasons, an absolute control is given over State legislation on the subject, so far as that legislation may be exercised, so as to affect the commerce of the country." Ch. J. Marshall, in *Gibbons v. Ogden*, 9 Wheat., 235. The power of the States is limited to the minimum of expense. Then, the money so raised shall be paid into the treasury of the United States, or may be sued for by them, since it is declared to be for their use. *Id.*, 238.

A bonus on the basis of earnings, as the consideration for granting a charter, is not an "impost." *R. R. Co. v. Maryland*, 21 Wall., 456.

Tax on passengers.—A special tax on railroad and stage companies for every passenger carried out of the State by them is a tax on the passenger for passing through the State. Such tax is not in conflict with the clause of the Constitution forbidding a State to lay a duty on exports. *Crandall v. Nevada*, 6 Wall., 35. But it is void as against interstate commerce. *Id.*

What is a tax upon exports?—A statute of California which imposed a stamp duty on every bill of lading

of gold or silver in coin or bars or other form, when transported from any point within to any point without the State is in effect a tax upon a class of exports and the law imposing it is void. *Almy v. California*, 24 How., 169.

Goods, the product of a State, intended for exportation to another State, are liable to taxation as part of the general mass of property of the State of their origin, until started in course of transportation to the State of destination or delivered to a common carrier for that purpose. The carrying them to and depositing them at a depot for transportation is not a part of that transportation. So held as to logs hauled from the place of cutting to the town of E. in New Hampshire, there to be transported upon the river to Lewiston, Maine. *Coe v. Errol*, 116 U. S., 517.

On the day to which a State assessment relates, the property was in products, on shipboard in the course of transportation, and could not be taxed. If on that day it was in money, the subsequent assessment of it could not be set aside, on the ground that when assessment was made it was employed in purchase of products for exportation. *People v. Comm'rs*, 104 U. S., 466.

NOTE.—Many taxes and impositions by States fall under the head of interference with interstate commerce, or foreign commerce, and the cases are collected under that head.

PROHIBITIONS ON THE STATES.

"No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

What is a tonnage tax?—Although a tax levied, as on property, by a State upon vessels owned by its citizens and based on a valuation of the same are not prohibited by the Federal Constitution; yet State taxes can not be imposed on them by any State at so much per ton of the registered tonnage, and are unconstitutional even though the vessels are owned within the State and engaged exclusively in trade within the State. State Tonnage Cases, 12 Wall., 204.

So much of the act of the legislature of New York, passed May 22, 1862, as amended April 17, 1865, as required ships and vessels which enter the port of New York, or load or unload or make fast to any wharf therein, to pay a certain percentage per ton, on the tonnage as registered, is a tax on tonnage and void. *Inman Steamship Company v. Tinker*, 94 U. S., 238. Tonnage is a vessel's internal cubical capacity.

The States can not levy a duty of tonnage on ships or vessels, even though they are engaged only in State

commerce, not internal or foreign. *Cox v. The Collector (State Tonnage Cases)*, 12 Wall., 204.

An ordinance of New Orleans which requires of all steamboats, which shall moor or land in any part of the port of New Orleans, a sum measured by the tonnage of the vessel, is a tonnage tax and void. *Cannon v. New Orleans*, 20 Wall., 577. This was done under pretence of compensation for wharfage; but for the use of wharves owned by a city a reasonable compensation may be charged and received. *Id.*

A State can not, in order to defray the expenses of her quarantine regulations, impose a tonnage tax on vessels owned in foreign ports and entering her harbors in pursuit of commerce. *Peete v. Morgan*, 19 Wall., 581.

What is not a tonnage tax?—A license of \$100 per boat required of the owner of a ferry boat plying across a river between two States is not “tonnage tax,” and may be imposed. *Wiggins Ferry Co. v. East St. Louis*, 107 U. S., 365.

The duty of tonnage prohibited by the Constitution is a charge upon a vessel according to its tonnage as the instrument of commerce, for the privilege of entering or leaving a port or navigating public waters. *Huse v. Glover*, 119 U. S., 543.

Reasonable compensation for the use of artificial facilities for the improvement of navigation is not a tonnage tax. *Id.*

Wharfage is not tonnage, and can be charged by State authority. *Transportation Company v. Parkersburg*, 107 U. S., 691. But it must be imposed in good faith, and to the extent of a fair remuneration. *Packet Co. v. St. Louis*, 100 U. S., 423. It may be graduated by the size of the vessel. *Id.* Whether the charge is wharfage or tonnage is a question of law and fact. The intent is immaterial. *Trans. Co. v. Parkersburg*, 107 U. S., 691.

The Vicksburg wharfage regulations were not a duty on tonnage, nor interference with interstate commerce. *Vicksburg v. Tobin*, 100 U. S., 430.

Taxes levied upon ships, by a State, although enrolled, owned by citizens of the State, based on a valuation of the vessel as property, are not within the Constitutional prohibition against levying duties of tonnage. *Transportation Co. v. Wheeling*, 99 U. S., 273.

But *wharfage* may be charged in proportion to tonnage. See, *ante*, p. 71.

Compact or agreement with other States.—It is not necessary that the consent of Congress be expressed in any particular form; and when Congress consented to the separation of Kentucky and its admission as a State into the Union, it amounted to consent to a compact previously made between them, and gave it the force of a contract, within the 18th section of the first Article of the Constitution. *Green v. Biddle*, 8 Wheat., 1.

The consent of Congress to an agreement or compact between two States may be implied from circumstances, such as arranging the judicial districts on the basis of a boundary settled by the States, or the forming of a congressional district on the same basis. *Virginia v. Tennessee*, 148 U. S., 504.

“Controversies between (States), arising out of public relations and intercourse, can not be settled either by war or diplomacy, though with the consent of Congress they may be composed by agreement. As pointed out by Mr. Justice Field in *Virginia v. Tennessee*, 148 U. S., 503, 519, there are many matters on which the different States may agree that can in no respect concern the United States, while there are other compacts or agreements to which the Constitution applies. And as to this, he quotes from Mr. Justice Story in his commentaries, Sec. 1408 * * * ‘that its language may be more plausibly interpreted from the terms used (in the previous part of the same section) “treaty alliance or confederation,” and upon the ground that the sense of each is best known by its association (*noscitur a sociis*) to apply to treaties of a political character; such as treaties of alliance, and treaties of confederation, in which the parties are leagued for mutual government, political co-operation, and the exercise of political sovereignty, and treaties of cession and sovereignty, or conferring internal political jurisdiction, or external political dependence, or

general commercial privileges, and that the latter clause, "compacts and agreements" might then very properly apply to such as might be deemed mere private rights of sovereignty; such as questions of boundary; interests in land situate in the territory of each other, and other internal regulations for the mutual comfort and convenience of States bordering on each other.' And he adds: 'In such cases the consent of Congress may be properly required, in order to check any infringement of the rights of the National government; and, at the same time, a total prohibition to enter into any compact and agreement might be attended with permanent inconvenience or public mischief.'"
Louisiana v. Texas, 176 U. S., 1, 17.

An agreement made between two States, made without consent of Congress, to appoint commissioners to run and mark the boundaries, is not within the inhibition of the above section. *Virginia v. Tennessee*, 148 U. S., 503. The consent of Congress may be implied from its subsequent action in assigning districts for judicial, election and revenue appointments on the basis of the boundaries agreed upon by the States. *Id.*

The compact of 1785 between Virginia and Maryland, settling the jurisdiction of each over Chesapeake bay and the Potomac and Pocomoke rivers, was not affected by the constitutional provision against compacts between States. That operates only on compacts made after, not before, the adoption of the Constitution. *Wharton v. Wise*, 153 U. S., 155.

ARTICLE II.

THE EXECUTIVE POWER.

SECTION 1. "The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:—"

PRESIDENTIAL ELECTORS.

"Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector."

Power of State legislature to provide for manner of choosing presidential electors.—The several State legislatures have exclusive power to direct the manner in which the electors of President and Vice-President shall be appointed. The appointment may be by the legislatures directly, or by popular vote in districts, or by general ticket, as the legislature may provide. *McPherson v. Blacker*, 146 U. S., 1.

The appointment of electors, and the mode thereof,

belong exclusively to the States, under the Constitution. *In re Green*, 134 U. S., 377, 379.

A State law fixing a different time for the meeting of electors is to that extent invalid, but not necessarily as to other provisions of the act. The date may be rejected and the other parts of the law stand. *McPherson v. Blacker*, 146 U. S., 1.

The 14th and 15th Amendments do not amend Article II of the Constitution, and do not limit the power of appointment to the particular manner of appointment of presidential electors pursued at the time of the adoption of the amendments. *Id.*

(Here is omitted that part of Section 1, Article II, which was amended by Article XII of the Amendments, which is as follows:)

"The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence

of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives, shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But

no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

“The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.”

The Executive Power is vested in the President, and as far as his powers are derived from the Constitution, he is beyond the reach of any other department, except through the impeaching power. But this is not true of other executive officers. Kendall v. United States, 12 Peters, 524. The obligation imposed on him to see the laws executed does not imply a power to forbid their execution. Id.

The President can not authorize a Secretary of State to omit the performance of duties which are enjoined by law. *Marbury v. Madison*, 1 Cranch, 137. It was held in this case that the Supreme Court could not, in the exercise of *original* jurisdiction, compel by mandamus the Secretary of State to issue a commission to an appointee.

Where rival State governments in a State each claim to be lawful, the President must determine as between them which is the legislature and Governor lawfully entitled to recognition and which is in insurrection. *Luther v. Borden*, 7 How., 1. When he has decided

the Courts of the United States are bound to follow his decision. *Id.*

The act of a head of a department in calling the attention of any person having business with such department, to a statute relating in any way to such business, can not be made the foundation of a cause of action against such officer. *Spalding v. Vilas*, 161 U. S., 483.

The President has the power to protect a judge of a court of the United States, who, while in the discharge of the duties of his office, is threatened with personal violence or death. *In re Nagle*, 135 U. S., 1.

When New Mexico was gained to the United States by conquest and treaty, the executive authority of the United States properly established a provisional government, which ordained laws and instituted judicial systems; all of which continued in force after the close of the war, and until modified by the direct legislation of Congress, or by the territorial government established by its authority. *Leitensdorfer v. Webb*, 20 How., 176.

When during the late civil war portions of the insurgent territory were occupied by the National forces, it was within the constitutional authority of the President to establish *provisional courts*, defining their powers, etc., by proclamation. *The Grapeshot*, 9 Wall., 129; see *Cross v. Harrison*, 16 How., 193; *Mechanics'*

and *Trader's Bank v. Union Bank*, 22 Wall., 276; *New Orleans v. The Steamship*, 20 Wall., 387.

ELIGIBILITY TO THE OFFICE.

"No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States."

Persons born in the colonies before the Declaration of Independence, had a right to elect whether they would retain their native allegiance to the British Crown, or would become citizens of the several States. The right of election has reference to that date, but it is not necessary that the election should be manifested by any act prior to or at the very time of the Declaration of Independence, and *prima facie*, if born before July 4, 1776, and remaining here after that day the person is to be deemed a citizen but this presumption may be rebutted by acts showing an adhesion to the British Crown during the struggle. *Inglis v. Trustees Sailor's Snug Harbor*, 3 Pet., 99. A person born in England before the Declaration of Independence and always residing there is an alien. *Dawson v. Godfrey*, 4 Cranch, 321.

DEVOLUTION OF OFFICE.

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

COMPENSATION.

"The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them."

OATH OF OFFICE.

"Before he enter on the execution of his office, he shall take the following oath or affirmation:—'I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.'"

POWERS OF THE PRESIDENT.

SECTION 2. "The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

Powers as commander-in-chief.—The President, as the executive chief of the government and commander-in-chief of the army and navy, has a right to institute a blockade of ports in possession of persons in armed rebellion. Prize Cases, 2 Black, 635.

The President has power to make and repeal rules and regulations for the government of the army, in respect to compensation for extra services, Congress not having legislated thereon, and the Secretary of War is the regular organ of the President for publicly promulgating such rules and regulations. United States v. Eliason, 16 Pet., 291.

The President has power to supersede or remove an officer in the army by appointing another in his place by and with consent of the Senate (Keyes v. United

States, 109 U. S., 336; *Blake v. United States*, 103 U. S., 227), and this notwithstanding the act of Congress of July 13, 1866, Sec. 5, which provides that no officer shall be dismissed from the army or navy in time of peace except upon and in pursuance of the sentence of a court martial to that effect or in commutation thereof. *Mullan v. United States*, 140 U. S., 240.

The Constitution does not prohibit the creation by military authority of courts for the trial of civil causes during civil war in conquered portions of the insurgent States. And where so established by a commanding general it will be presumed in the absence of proof to the contrary, that the President authorized it. *Mech. and Traders' Bk. v. Union Bk.*, 22 Wall., 276.

The President, as commander-in-chief and vested with charge of hostile operations, may permit limited commercial intercourse with an enemy in time of war, especially so, when he has the concurrent authority of an act of Congress, viz.: Act of July 13, 1861 (12 Stat. at L., p. 257); *Hamilton v. Dillin*, 21 Wall., 73.

The proclamation of the President takes effect as of the beginning of the day of its date. So held of a proclamation annulling all restrictions to trade with States lately in rebellion in the territory east of the Mississippi, imposed under the Act of June 13, 1865 (13 Stats., 763). *United States v. Norton*, 97 U. S., 164.

The pardoning power of the President.—In order to ascertain what is meant by the power to grant reprieves and pardons resort must be had to the meaning of these words and the power as used in England under the common law. From these sources it appears that the power includes the right to commute the sentence of the court by substituting a milder punishment as imprisonment in place of sentence of death; and acceptance of such pardon binds the convict to the substituted punishment. *Ex parte Wells*, 18 How., 307.

Pardon of the President under Act of July 17, 1862 (13 Stat. at L., 592) by proclamation operates to *grant oblivion*, and removes all consequences of giving aid and comfort to those in rebellion (*United States v. Padelford*, 9 Wall., 531) and entitles the persons pardoned to a *restoration of all rights* of property, except slaves, on condition of their taking and keeping inviolate the oath prescribed. *United States v. Klein*, 13 Wall., 128. See *Wallach v. Van Riswick*, 92 U. S., 202.

The President's proclamation of pardon and amnesty unconditionally and without reservation to all who participated, directly or indirectly, in the late rebellion relieves claimants of captured and abandoned property from proof of adhesion to the United States, during the late civil war. *Pargoud v. United States*, 13 Wall., 156.

A pardon is an act of grace, proceeding from the

power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private though official act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court. It must be brought to the notice of the court by plea or motion. *United States v. Wilson*, 7 Pet., 150.

A pardon by the President for all offenses arising from participation in the rebellion, relieves the recipient from the necessity of taking the oath required by the Act of January 24, 1865. *Ex parte Garland*, 4 Wall., 333. Such pardon blots out the offense (*Armstrong v. United States*, 13 Wall., 154; *United States v. Padelford*, 9 Wall., 531; *Knox v. United States*, 95 U. S., 149) and restores to the recipient all rights of property lost by the offense, unless it has by judicial process become vested in other persons. *Osborn v. United States*, 91 U. S., 474; *Carlisle v. United States*, 16 Wall., 147. As to them, it can not affect rights vested in others directly by the execution of the judgment for the offense, or acquired by others while it was in force. *Knote v. United States*, 95 U. S., 149. *The Confiscation Cases*, 20 Wall., 92; *Semmes v. United States*, 91 U. S., 21.

The general pardon of the owner relieves him of so much of the penalty as accrued to the United States

under the Confiscation Act of August 3d, 1861. *Armstrong's Foundry*, 6 Wall., 766.

The proviso in the general appropriation Act of 1870, which assumes to annul the effect of the President's pardon, in claims pending before the Court of Claims, can have no such annulling effect. *United States v. Klein*, 13 Wall., 128.

But where the statute prohibits payment of claims to persons not known to be loyal during the war, a pardon does not authorize the payment of such claims. *Hart v. United States*, 118 U. S., 62.

One convicted by a consular court having jurisdiction, and sentenced to death for murder, but accepting a pardon granted on condition that he be imprisoned for life in a penitentiary is bound by the condition. *In re Ross*, 140 U. S., 453.

The recital in a pardon that it is granted at the request of the district attorney, in order to restore the competency of the pardoned person as a witness in a murder trial, does not alter the fact that the pardon is full and unconditional. *Boyd v. United States*, 142 U. S., 450.

TREATY-MAKING POWER—DIPLOMATIC APPOINTMENTS.

"He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate,

shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

Treaties.—Though a treaty is the law of the land, and its provisions must be regarded by courts as equivalent to an act of the Congress when it operates directly on a subject, yet if it be merely a stipulation for future legislation by Congress, it addresses itself to the political power, and the judicial department must await congressional action. *Foster v. Neilson*, 2 Pet., 253. See, *post*, pp. 283-4.

The statute of the State of Georgia, which subjected to punishment all white people residing within the limits of the Cherokee nation, and authorized their arrest and forcible removal therefrom, was held repugnant to the laws and treaties of the United States. *Worcester v. State of Georgia*, 6 Pet., 515.

The treaty of peace between the United States and Great Britain, concluded on the 3rd of September, 1783 (8 Stat. at L., p. 80) enables British creditors to recover debts, previously contracted to them by our citizens, notwithstanding a payment into a State treas-

ury had been made during the war, under the authority of a State law of sequestration. *Ware v. Hylton*, 3 Dall., 199.

The treaty with the Cherokee Indians, made Dec. 29, 1835, was made under the treaty-making power vested by the Constitution in the President and Senate. *Holden v. Joy*, 17 Wall., 211.

Vice-Consuls.—Secs. 1695, 1703, Rev. St., empowering the President to provide for the appointment of vice-consuls, are valid, though not requiring the advice and consent of the Senate. They fall under the class of those inferior officers, whose appointment Congress may vest in the President alone. *United States v. Eaton*, 169 U. S., 331.

The power of appointment.—The appointment and commission of a collector of internal taxes “until the end of the next session of Congress and no longer,” is not continued by a new appointment and commission during the pleasure of the President. The latter is a new appointment distinct from the first and requires a new bond. *United States v. Kirkpatrick*, 9 Wheat., 720.

POWER TO FILL VACANCIES.

“The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.”

Appointments.—Where the President makes an appointment to hold till the end of the next session, and then after the session, appoints the same officer to hold during pleasure, it is a new appointment requiring a new bond, and the sureties on the first bond are not liable for acts done under the second commission. *United States v. Kirkpatrick*, 9 Wheat., 720.

DUTIES AND POWERS AS TO CONGRESS.

SECTION 3. "He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States."

"Shall commission all the officers of the United States."—When a commission has been signed the appointment is made; and the commission is complete when the seal of the United States has been affixed to it by the Secretary of State. Where the officer is removable at the will of the President, the circumstance which completes his appointment is of no concern, be-

cause the act is at any time revocable. But where the officer is not removable at the will of the Executive, the appointment is not revocable and can not be annulled. This was held, but as the Supreme Court had no original jurisdiction to compel the Secretary of State to deliver the commission, the rule to show cause why *mandamus* should not issue was discharged. *Marbury v. Madison*, 1 Cranch, 137.

REMOVAL ON IMPEACHMENT.

SECTION 4. "The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

ARTICLE III.

THE JUDICIAL POWER.

SECTION 1. "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

EXTENT OF JUDICIAL POWER.

SECTION 2. "The judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects."

Changed by amendment.—This was changed by the eleventh Amendment, which reads: "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or citizens or subjects of a foreign State."

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make." See *post*, p. 321.

The 12th section of the Interstate Commerce Act, authorizing the Circuit Court of the United States to use their process to compel attendance of witnesses before the Interstate Commerce Commission does not conflict with the Federal Constitution by imposing on such courts duties not judicial in their nature. *Interstate Commerce Commission v. Brimson*, 154 U. S., 447.

TRIAL OF CRIMES BY JURY.

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

Jurisdiction of the Supreme Court.—The Supreme Court has no jurisdiction of purely political questions, of those not involving rights of persons or property, such as a bill to abolish an existing State government, or to restrain the executive or the Secretary of War from carrying into effect acts of Congress which would work such abolition. *Georgia v. Stanton*, 6 Wall., 50. Nor, of a bill to enjoin the President in the execution of his duties. *Mississippi v. Johnson*, 4 Wall., 475.

Congress may prescribe the process or mode of proceeding where the Supreme Court has original jurisdiction; but the jurisdiction of the court does not depend

on such Congressional action; and the court may, if occasion require, make its own rules. *Chisholm v. Georgia*, 2 Dall., 419; *Kentucky v. Dennison*, 24 How., 98; *New Jersey v. New York*, 5 Pet., 284.

But the court must keep within the limits of its jurisdiction; its acts beyond are void. *Rhode Island v. Massachusetts*, 12 Pet., 657.

Its original jurisdiction embraces actions at law and suits in equity. *Wheeling Bridge Case*, 13 How., 518.

Congress can not enlarge its original jurisdiction. *Marbury v. Madison*, 1 Cranch, 137; *New Jersey v. New York*, 5 Pet., 284; *Kendall v. United States*, 12 Pet., 637; *Cohens v. Virginia*, 6 Wheat., 264.

States can not restrict Federal jurisdiction. An agreement to abstain from resorting to the United States courts is against public policy and a statute requiring such agreement void; but the State may impose as a condition to do business in the State, that a corporation shall not remove a case into the Federal courts, and may revoke its license where such removal is made. *Doyle v. Ins. Co.*, 94 U. S., 535; following and explaining, *Ins. Co. v. Morse*, 20 Wall., 44.

State law requiring a corporation to stipulate not to remove causes is void, because it requires the surrender by the foreign corporation of a privilege secured by the Constitution and laws of the United States. *Barron v. Burnside*, 121 U. S., 186.

A State can not by Constitution or statute prohibit the judges of the Federal courts from charging juries with regard to matters of fact. *St. Louis, etc., R'y Co. v. Vickers*, 122 U. S., 360; *Vicksburg, etc., R'y Co. v. Putnam*, 118 U. S., 545; *Nudd v. Burrows*, 91 U. S., 426; *Ind., etc., R'y Co. v. Horst*, 93 U. S., 291.

• So far as the sovereignty of the United States extends its sovereignty is supreme. No State can obstruct its officers, and it can protect them; and such protection is not dependent on State courts (*Tennessee v. Davis*, 100 U. S., 257); and original causes against Federal officers, for acts done under color of office, can be removed to the Federal courts. R. S., Sec. 643, held valid. *Tennessee v. Davis*, 100 U. S., 257.

Congress may give the Supreme Court appellate jurisdiction of cases where it has original jurisdiction. *Gittings v. Crawford*, Taney, 9; *Börs v. Preston*, 111 U. S., 260.

The Supreme Court may protect itself and its members from disturbance in the exercise of its functions. *Ex parte Bollman*, 4 Cranch, 94. The President, under his general obligation to see that the laws are faithfully executed, is in duty bound to protect the judges from personal violence while executing their duties. *In re Neagle*, 135 U. S., 1.

• *Can act only where there is an actual controversy.*—The Supreme Court has no jurisdiction to declare void a Federal State statute, except when a case is brought be-

fore it, between litigants to an actual controversy. It never anticipates a question nor lays down a rule broader than the case before it requires. *Liverpool, etc., Co. v. Com'rs of Emigration*, 113 U. S., 33.

The original jurisdiction of the Supreme Court.—The original jurisdiction of the Supreme Court is conferred by Art. III, section 2, clause 1, which declares the cases in which the court shall have original jurisdiction. *Cherokee Nation v. State of Georgia*, 5 Pet., 1. This second clause distributes the jurisdiction conferred upon the Supreme Court in the previous one into original and appellate jurisdiction, but does not profess to confer any. *Penn. v. Quicksilver Co.*, 10 Wall., 553.

"In all the cases affecting ambassadors or other public ministers."—The court on application of a person claiming to be a public minister for a writ of prohibition or *mandamus*, to restrain a district court from the exercise of its ordinary jurisdiction, will require the certificate of the State that he is such minister, and accept the same as conclusive evidence as to his character. A consul general of a country, in the absence of the regular minister, is not privileged as a public minister, as respects the original jurisdiction of the Supreme Court. *In re Baiz*, 135 U. S., 403. The immunity of foreign ministers, as representatives of their sovereigns, is discussed by Chief Justice Marshall, in *Schr. Exchange v. McFaddon*, 7 Cranch, 116, 138.

Jurisdiction of the Supreme Court in cases where State is a party.—Under the Constitution, as originally adopted, a State could be sued by an individual citizen of another State. *Chisholm v. Georgia*, 2 Dall., 419. Service of process on the Governor and Attorney General of the State was sufficient service of the process, and the court ordered that judgment by default should be entered unless the State appeared or showed cause by the next term. *Id.*; *Grayson v. Virginia*, 3 Dall., 320. In equity like service of subpoena might be made, to be served sixty days before the return day and if the State did not appear the plaintiff might proceed *ex parte*. *Grayson v. Virginia*, 3 Dall., 320.

“It is a part of our history, that, at the adoption of the Constitution all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very strong objection to that instrument. Suits were instituted and the court maintained its jurisdiction. The alarm was general; and to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress.

* * * The amendment extended to suits commenced or prosecuted by individuals but not to those brought by States.” *Cohens v. Virginia*, 6 Wheat., 406. This amendment applies only to original suits against the States, and does not touch the appellate jurisdiction of the Supreme Court to re-examine on appeal or writ of error a judgment rendered by a State court. *Id.*, 264.

In cases "in which a State shall be a party."—To give the Supreme Court jurisdiction on the ground that a State is a party, the State must be the real party to the record. *U. S. Bank v. Planters' Bank*, 9 Wheat., 906; *Lincoln Co. v. Luning*, 133 U. S., 529. It is not enough that the State be consequentially affected (*Fowler v. Lindsey*, 3 Dall., 411; *Wheeling Bridge Cases*, 13 How., 559), nor where a State sues a State for the benefit of a citizen. *New Hampshire v. Louisiana*, 108 U. S., 76; *New York v. Louisiana*, id., 91; *Louisiana v. Texas*, 176 U. S., 1, 16. (See *post*, p. 321.) Nor does it derive jurisdiction when another political community, such as an Indian tribe (*Cherokee Nation v. Georgia*, 5 Pet., 15), or the District of Columbia (*Hepburn v. Ellzey*, 2 Cranch, 445), brings the action or is sued.

No act of Congress is necessary to give the Supreme Court jurisdiction of a suit between States. *Kentucky v. Dennison*, 24 How., 66; *New Jersey v. New York*, 5 Pet., 284; *Georgia v. Brailsford*, 3 Dall., 1.

A suit by or against a Governor of a State, in his official character, is a suit by or against a State. *Kentucky v. Dennison*, Governor, 24 How., 66.

Where the chief magistrate is sued, not by his name but in his official character, and the claim is made upon him solely as such officer and not personally the State is deemed the party of record. *Governor of Georgia v. Madrazo*, 1 Pet., 110.

Making a State officer a party does not make the State a party, although the officer may act pursuant to a State law. *Davis v. Gray*, 16 Wall., 203.

A suit against individuals, as officers of a State, to prevent them from enforcing an unconstitutional statute is not a suit against the State. *Smyth v. Ames*, 169 U. S., 466.

A suit against State officers to recover real property is not a suit against the State so as to deprive a Federal court of jurisdiction. *Tindal v. Wesley*, 167 U. S., 204.

When a State holds a large amount of bonds, which are a lien upon a railroad, and the trustees of the bonds are the State agents, but hold the legal title in trust for the State, the State may seek relief in equity in the Supreme Court against citizens of another State. *Florida v. Anderson*, 91 U. S., 667.

Where the State is a stockholder in a private corporation, the fact will not give the Supreme Court original jurisdiction of suit where the corporation is a party, nor disturb the jurisdiction of the Circuit Court. *Bank of United States v. Planters' Bank of Georgia*, 9 Wheat., 904; *Bk. of Ky. v. Wister*, 2 Pet., 318; *Briscoe v. Bk. of Ky.*, 11 Pet., 324; *Darrington v. Bk. of Ala.*, 13 How., 12; *Curran v. Ark.*, 15 How., 304; *Davis v. Gray*, 16 Wall., 203.

A suit against a State, by its own citizen, can not be brought in a Federal Court without the consent of the

State. *Hans v. Louisiana*, 134 U. S., 1; *North Carolina v. Temple*, 134 U. S., 22; *Pennoyer v. McConaughy*, 140 U. S., 1.

The 11th Amendment limits the Federal jurisdiction over suits against States to those in which the State is the real party or a party in the record. *Lincoln County v. Luning*, 133 U. S., 529.

The prohibition to sue a State, in the 11th Amendment, does not extend to a case in which the State is not made a party on the record, even though it has the entire ultimate interest in the subject of the suit. *Osborn v. U. S. B.*, 9 Wheat., 738. But see, *In re Ayers*, 123 U. S., 443.

A State may sue in the Supreme Court to enjoin payment of a judgment in behalf of a British creditor taken on a debt, which was confiscated by the State, until it can be ascertained to whom the money belongs. *Georgia v. Brailsford*, 2 Dall., 402, 415.

It is denied jurisdiction, by the 11th Amendment, of suits against a State by citizens of another State or the citizens or subjects of foreign States. *Georgia v. Brailsford*, 2 Dall., 402; *Chisholm v. Georgia*, 2 Dall., 419; *Cohens v. Virginia*, 6 Wheat., 264; *Osborn v. United States' Bank*, 9 Wheat., 738; *United States' Bank v. Planters' Bank*, 9 Wheat., 904; *Georgia v. Madrazo*, 1 Pet., 110; *Cherokee Nation v. Georgia*, 5 Pet., 1; *Brisco v. Kentucky*, 11 Pet., 324; *Darrington v. Bk. of Ala.*, 13 How., 12; *Curran v. Ark.*, 15 How., 304; *Davis v. Gray*, 16 Wall., 203.

The Supreme Court has original jurisdiction of suits by a State against citizens of other States, but this was not intended to confer the power to entertain an action of a nature, not, upon settled principles of public law, to be entertained in the judiciary of another State; such as to recover a penalty imposed by the laws of the State that sues, for a breach of its municipal law. *Wisconsin v. Pelican Ins. Co.*, 127 U. S., 265.

Suits between States to settle boundaries.—The Supreme Court has jurisdiction of a suit in equity filed by one State against another to ascertain and establish their boundaries. *Rhode Island v. Massachusetts*, 12 Pet., 657; *Virginia v. Tennessee*, 148 U. S., 503; *Missouri v. Iowa*, 7 How., 660; *Florida v. Georgia*, 17 How., 478; *Missouri v. Kentucky*, 11 Wall., 397; *Iowa v. Illinois*, 147 U. S., 1; *Indiana v. Kentucky*, 136 U. S., 479; *Nebraska v. Iowa*, 143 U. S., 359; *Iowa v. Illinois*, 151 U. S., 238.

Appellate jurisdiction of Supreme Court over United States Courts.—Congress in 1793 and in 1789 passed “a judiciary act” as it is called, creating circuit and district courts and defining their jurisdiction. By the 22d section it gave the Supreme Court appellate jurisdiction over them as follows: “And upon like process (writ of error) may final judgments and decrees in civil actions and suits in equity in a circuit court, brought there by original process, or removed there from the courts of the several States, or removed there by appeal from a district court, where the matter in dispute ex-

ceeds the sum or value of two thousand dollars, exclusive of costs, be re-examined and reversed or affirmed in the Supreme Court, the citation being in such case signed by a judge of such Circuit Court, or justice of the Supreme Court, and the party having at least thirty days' notice." Sec. 22, Ch. 20, 1 Stats. at L., 1789.

This appellate jurisdiction was much changed by the Act of March 3, 1891, which created the nine Circuit Courts of Appeals, as intermediate appellate courts, to cut off from the Supreme Court a vast mass of appeals in matters not involving constitutional or jurisdictional questions. The appellate jurisdiction over the Circuit Courts of the United States, since the Act of 1891, is as follows:

1. In any case in which the jurisdiction of the trial court is in issue (in such cases, however, the question of jurisdiction only is to be certified to the Supreme Court from the court below for decision).
2. From final sentences and decrees in prize causes.
3. From cases of conviction of a capital or otherwise infamous crime.
4. In any case that involves the construction or application of the Constitution of the United States.
5. In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question.
6. In any case in which the Constitution or law of a

State is claimed to be in contravention of the Constitution of the United States. . (Act March 3, 1891.)

Appellate jurisdiction of the Supreme Court over the Court of Appeals.—The Supreme Court has appellate jurisdiction over the Circuit Courts of Appeals:

1. By writ of error or appeal in all cases where the matter in controversy shall exceed \$1,000, besides costs, in all cases where the decision of the Circuit Courts of Appeals is not made final as hereinafter specified.

2. When the Supreme Court deems any matter before a Circuit Court of Appeals so important that it should take charge of it and decide it, the Supreme Court may issue a writ of certiorari to the Circuit Court of Appeals, to send up the case before it to the Supreme Court, there for final decision, review or determination. The object of this is, doubtless, to secure uniformity of decision in the various Courts of Appeals.

3. When one of the Circuit Courts of Appeals is in doubt as to any matter, it may, of its own motion, certify to the Supreme Court any questions or propositions of law, arising in a case pending in such Circuit Court of Appeals, concerning which it desires the instruction of the Supreme Court for its proper decision. (Act of March 3, 1891.)

Appellate jurisdiction of the Supreme Court over State Courts.—It is declared in the Constitution of the United States that the Constitution of the United States and the laws and treaties made in pursuance “shall be

the supreme law of the land ; and the judges in the several States shall be bound thereby, anything in the Constitution of any State to the contrary notwithstanding." The Supreme Court is the ultimate tribunal in all such cases. The Supreme Court is vested with the power to issue a writ of error to review the final judgment or decree of the highest court of a State in which a decision could be had in the following cases :

1. Where the validity of a treaty or statute of, or an authority exercised under the United States, is drawn in question and the decision of the State Court is against their validity ;

2. Where the validity of a statute of, or an authority exercised under a State, is drawn in question on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision of the State Court is in favor of their validity ;

3. Where any title, right, privilege or immunity so claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision of the State Courts is against the title, right, privilege or immunity so set up or claimed, under such Constitution, treaty, statute, commission or authority. R. S., Sec. 709.

This is one of the most important statutes ever passed by Congress in respect to far-reaching consequences. It prevents the nullification of the Constitution or laws of the United States by State legislatures and courts. It

has been decided to be itself constitutional. *Martin v. Hunter's Lessee*, 1 Wheat., 304; *Cohens v. Virginia*, 6 id., 264; *Ableman v. Booth*, 21 How., 506; *Williams v. Bruffy*, 102 U. S., 248.

The following are among the most important points that have been decided:

1. It is the only means of bringing a case from the Supreme Court of a State to the Supreme Court of the United States. *Verden v. Coleman*, 22 How., 192.

2. There is no distinction between civil and criminal cases. *Twitchell v. Pennsylvania*, 7 Wall., 321. But, if the prisoner should escape, the court will not entertain a writ of error in his behalf, until he returns and submits himself to the court below. *Bohanan v. Nebraska*, 125 U. S., 692.

3. The citizenship of the parties is immaterial. *French v. Hopkins*, 124 U. S., 524.

4. Consent can not give jurisdiction in this case. It can be derived only from the Constitution and laws. *Mills v. Brown*, 16 Pet., 525.

5. This statute includes all cases where rights protected by the Constitution, laws or treaties are involved, however created, and no matter how frivolous the objection. *Hall v. Jordan*, 15 Wall., 393.

6. This section includes all cases in chancery as well as in law; and in a chancery case, where the evidence becomes a part of the record in the highest court of the State, the Supreme Court of the United States can re-

view the law and the facts so far as necessary to determine the validity of the right, title, etc.; but in cases tried by jury or in jury cases where the jury has been waived and the court tries the case, the Supreme Court can not review the facts, but only the questions of law raised by the record. *Boggs v. Mining Co.*, 3 Wall., 304; *River Bridge Co. v. Kas. Pac. Ry. Co.*, 92 U. S., 317.

7. It must be from a final judgment or decree. This means the judgment which would, when enforced, end the case. See *Dainese v. Kendall*, 119 U. S., 53. It must be final as to all matters within the pleadings. *Craighead v. Wilson*, 18 How., 201. It may be final as to the right, though it may have some matters of account to be settled by further decree. *Forgay v. Conrad*, 6 How., 201.

The judgment may be reviewed, though it comes up on a case stated—that is, on an agreed state of facts. *Aldrich v. Insurance Co.*, 8 Wall., 491.

8. This writ of error lies “*in any suit*,” etc. What is meant by *suit*? The court holds that it means any proceeding in which an individual proposes a remedy afforded by law. *Weston v. Charleston*, 2 Pet., 449. It includes not only the ordinary actions of the common law, but the extraordinary remedies of the common law, such as *mandamus*, *quo warranto*, *writ of prohibition* and the *writ of habeas corpus*, and all suits in equity. It also includes the special proceedings to take land for

public use. *Sewing Machine Cases*, 18 Wall., 585; *Holmes v. Jennison*, 14 Peters, 564; *Ex parte Milligan*, 4 Wall., 133; *Kohl v. United States*, 91 U. S., 375.

9. The suit need not be necessarily in the highest court of the State, but in the highest court in which a decision could be had. If a case stops in some lower court and no appeal or writ of error is allowed from it to a higher court in that State, then a writ of error can be sent to that court which is the highest to which the case can go. *Gregory v. McVeigh*, 23 Wall., 306. But where the highest court allows cases to come before it, in some instances only on leave first obtained, the refusal to grant leave will be deemed equivalent to an affirmance of the court below and will be deemed the judgment of the highest court. *Id.*

10. In some States the legislature once had a power given by the Constitution to set aside the judgment of a State court. But this fact did not prevent the Supreme Court of the United States from sending its writ of error to the court (*Olney v. Arnold*, 3 Dall., 308) because the statute gives writ to the highest *court*, and the legislature is not deemed a court, although it might have this power to reverse and set aside judgments.

11. The Supreme Court has jurisdiction only over such questions as are defined in the statute above quoted. They are called "federal questions" (*Wiscart v. Dauchy*, 3 Dall., 321), and the record must show a Federal ques-

tion is involved. *Murdock v. Memphis*, 20 Wall., 620. See Notes, Gould & Tucker, p. 176, for numerous citations. When it is certified by the State court that a Federal question exists, this is not conclusive. *Parmelee v. Lawrence*, 11 Wall., 36. And the Federal question must have been raised and presented, though not formally. *Crowell v. Randell*, 10 Pet., 368; *Armstrong v. Athens Co.*, 16 id., 281. It is not enough that a Federal question might have been raised or ought to have been raised. *Hoyt v. Sheldon*, 1 Black., 518; *R. R. Co. v. Guthard*, 114 U. S., 136; *The Victory*, 6 Wall., 382.

It must appear that the court either knew or ought to have known that a Federal question was involved in the decision to be made. *Brown v. Colorado*, 106 U. S., 95; *Boom Co. v. Boom Co.*, 110 U. S., 57.

Generally, it may be said that the point whether a Federal question is raised is one of great delicacy; and the test is always found in the statute. It is necessary here to recapitulate the cases in which the great, final, ultimate appellate jurisdiction can be invoked:

1. When is drawn in question the validity of the United States or a treaty, and the decision is against such validity.

2. The Supreme Court has also jurisdiction over the State court, under this section, where is drawn in question the validity of a statute, or an authority exercised under any State, on the ground of their being repug-

nant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity.

3. The Supreme Court has also jurisdiction of an appellate nature over the State court, where any rights, title, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed. R. S., U. S., Sec. 709.

To illustrate the meaning of this statute let us suppose that A holds a piece of land under a patent from the United States. Some one brings ejectment against him in a State court. He claims to own it by good title derived from his patent from the United States. He sets up his claim of title and the State court decides against it—that it confers no title. He appeals to the highest court of the State; and his title is there decided against. He can then sue out a writ of error from the Supreme Court of the United States to the State court to obtain a review and reversal of the decision. *Bell v. Hearne*, 19 How., 252; *Reichart v. Felps*, 6 Wall., 160; *Berthold v. McDonald*, 22 How., 334; *Silver v. Ladd*, 6 Wall., 440.

Another instance of this appellate jurisdiction would be this: A holds a patent right from the United States. In some action in the State court he sets up or claims this right as essential to his claim or defense. The highest court decides against its validity. He then

seeks redress, under this clause, in the Supreme Court of the United States.

So if he held a commission under the United States and it gave him certain power, and he exercised that power, and was sued in the State court and there his commission was held invalid, he might be greatly oppressed and the authority of the United States overridden, unless the Supreme Court could review the adverse State decision and uphold his right. See Gould & Tucker's Notes, pp. 180-184.

But the question must be a Federal question, that is, it must raise some one of these questions specified in the statute above quoted. The Supreme Court can not review questions of mere general law. *United States v. Thompson*, 93 U. S., 586; *Bank v. McVeigh*, 98 U. S., 332; *Allen v. McVeigh*, 107 *id.*, 433. Nor can the Supreme Court thus review questions of local law, not raising a Federal question. *Poppe v. Langford*, 104 U. S., 770. No Federal question is raised when the State court decides that a law of the State is contrary to the State Constitution, unless it also appears to be against the Federal Constitution. *Withers v. Buckley*, 20 How., 84; *Medbery v. Ohio*, 20 Ohio, 24 How., 413; *Porter v. Foley*, 24 How., 415; *Salomons v. Graham*, 15 Wall., 208; *Hart v. Lampshire*, 3 Pet., 280; *Watson v. Mercer*, 8 Pet., 88; *Mitchell v. Clark*, 110 U. S., 633; *West Tenn. Bank v. Citizens' Bank*, 13 Wall.,

432; *Mitchell v. Lenox*, 14 Pet., 49. See *Gould & Tucker's Notes*, pp. 179, 183; *Eustis v. Bolles*, 150 U. S., 361; *Dower v. Richards*, 151 U. S., 658, 666; *Mo. Pac. Ry. Co. v. Fitzgerald*, 160 U. S., 556; *Osborne v. Florida*, 164 U. S., 650; *Wade v. Lawder*, 165 U. S., 624.

Territorial courts.—These courts are created by Congress, under the power to make all needful rules and regulations. They are not courts of the United States. *Am. Ins. Co. v. Canter*, 1 Pet., 511; *Benner v. Porter*, 9 How., 235; *Forsyth v. United States*, 9 How., 571; *Clinton v. Englebrecht*, 13 Wall., 434; *Hornbuckle v. Toombs*, 18 Wall., 648; *Reynolds v. United States*, 98 U. S., 145; *Good v. Martin*, 95 U. S., 90. Their judges are not judges of the courts of the United States. *Id.*

TREASON DEFINED, ETC.

SECTION 3. "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

"The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained."

What is treason?—There must be an actual assemblage of men for the treasonable purpose, to constitute levying war. A mere conspiracy or the enlistment of men is not sufficient. *Ex parte Bollman*, 4 Cranch, 75. But when enemies are at war with the United States, the enlisting or procuring enlistments for the enemy's service is treason. *Respublica v. M'Carty*, 2 Dall., 86. Nothing will excuse joining the enemy but the fear of present death. *Id.* Fear of loss of property or its destruction, or of slight or remote injury to the person will not excuse (*United States v. Vigol*, 2 Dall., 346), nor will drunkenness. *Respublica v. Weidle*, 2 Dall., 88. It is treason to suppress by armed force the officer of excise and to render nugatory the laws of Congress. *U. S. v. Vigol*, 2 Dall., 346; *U. S. v. Mitchell*, 2 Dall., 348.

Who may be guilty of treason.—Only a citizen can be guilty of high treason. *United States v. Villato*, 2 Dall., 370. It is a breach of allegiance and can be committed only by one owing allegiance either permanent or temporary. *United States v. Wiltberger*, 5 Wheat., 76, 97.

Aliens domiciled in the United States owe a local and temporary allegiance to the government of the United States, and are equally amenable with citizens for infraction of the laws, except such as relate immediately to citizenship, while they reside within the United States. For selling salt petre to the Confederate States knowing that it was to be used in the manufacture of gun powder, they were amenable for treason

in giving aid and comfort to the enemy. *Carlisle v. United States*, 16 Wall., 147.

ARTICLE IV.

FAITH AND CREDIT TO ACTS, ETC., OF OTHER STATES.

SECTION 1. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

When full faith and credit to be given.—This rule applies to courts only so far as they have jurisdiction. Lacking that the record is not entitled to credit (*Pub. Works v. Columbia College*, 17 Wall., 521) and does not prevent an inquiry into the jurisdiction. *Thompson v. Whitman*, 18 Wall., 457.

The record may be contradicted by proving the facts therein stated or recited to show jurisdiction to be false. *Id.* Want of jurisdiction may be shown either of the subject matter, the person or the rem. *Id.* *D'Arcy v. Ketchum*, 11 How., 165; *Knowles v. Gas Light Coke Co.*, 19 Wall., 58; *Hall v. Lanning*, 91 U. S., 160.

In an action on a judgment rendered in another State, the defendant, notwithstanding the record shows a return of a sheriff that he was personally served with

process, may show the contrary to defeat jurisdiction. *Knowles v. Gas Light and Coke Co.*, 19 Wall., 58.

A judgment obtained against a non-resident joint debtor, without notice to him, is entitled to no faith and credit out of the jurisdiction where rendered. *D'Arcy v. Ketchum*, 11 How., 165.

Under this clause and R. S., Sec. 905, a judgment recovered in one State against two joint defendants, only one of whom has been duly served with summons, and which is valid and enforceable by the law of that State against the former alone, will support an action against the one so served in another State. *Hanley v. Donoghue*, 116 U. S., 1; *Renaud v. Abbott*, 116 U. S., 277.

In a personal action brought in a State against a corporation that is not incorporated there, nor does business nor has an agent or property in such State, a judgment rendered can not be recognized as valid in any other State; even though the summons were served on the President while temporarily in such State. *Goldey v. Morning News*, 156 U. S., 518.

The tribunals of one State have no jurisdiction over persons of other States unless found within their territorial limits. *Galpin v. Page*, 18 Wall., 350.

The partner, not residing in the State where the firm is sued, is not personally bound by the judgment recovered in that State, when he is not served, though after dissolution other partners did appear and entered ap-

pearance for all the parties. *Hall v. Lanning*, 91 U. S., 160.

Process from the tribunals of one State can not run into another State and summon a party there domiciled; and publication of process within the State can not summon him to appear. A judgment obtained on such service may be sufficient to dispose of the property of the defendant brought by seizure or some equivalent act within the control of the court; but as to the absent defendant's personal rights and obligations it is ineffectual. A judgment against him personally for the recovery of money, rendered upon such constructive service, is not entitled to credit in the Federal courts or courts of other States. *Pennoyer v. Neff*, 95 U. S., 714.

Where, by the State law, constructive service by publication of summons or process is provided, and upon such service the court is authorized to adjudicate upon the rights of the absent party, strict compliance with the statutory mode of service must be observed. *Galpin v. Page*, 18 Wall., 350.

Where B, a citizen of Maryland, had executed a bond, with a warrant authorizing any attorney of any court of record in the State of New York or any other State to confess judgment for the penalty, and judgment having been entered in Pennsylvania under local law, without service of process or appearance of attorney or in person by the defendant, the courts of Maryland were

not bound to give faith and credit to such judgment. *Grover, etc., Mch. Co. v. Radcliffe*, 137 U. S., 287.

This provision "establishes a rule of evidence rather than of jurisdiction." "It does not make the judgments of other States domestic judgments to all intents and purposes, but only gives a general validity, faith and credit to them as evidence. No execution can issue upon such judgments without a new suit in the tribunals of other States. And they enjoy not the rights of priority or lien, which they have in the State where they are pronounced." See *Wisconsin v. Pelican Co.*, 127 U. S., 292. "To give it force of a judgment in another State it must be sued upon and made a judgment there and can only be executed as its laws may permit." *M'Elmoyle v. Cohen*, 13 Pet., 312, 325.

As to public acts, records and judicial proceedings, this clause requires that the same effect be given them that by law and usage they have at home. *Chicago, etc., R'y Co. v. Wiggins*, 119 U. S., 615.

A statute which declares that "no action shall be maintained on any judgments or decree rendered without the State against one who was at the time a resident of the State passing the law, is void as in conflict with the full faith and credit clause. *Christmas v. Russell*, 5 Wall., 290.

Records and judicial proceedings of each State, so far as they affect property in that State, must be given the same force and effect in other States that they have at

home; but as to similar property elsewhere they have no greater effect than similar records or proceedings of the State not of origin. *Robertson v. Pickrell*, 109 U. S., 608.

The power of a will is determined by the law of the State where the land lies. If admitted to probate in another State, the validity of the devise is determined not by the judgment of probate but by the *lex rei sitae* (the law of the site of the land). *Robertson v. Pickrell*, 109 U. S., 608.

The laws of another State, in order for the court of a State to give them full force and credit, must be proved as a fact. *Chicago, etc., R'y Co. v. Wiggins Ferry Co.*, 119 U. S., 615.

A judgment of one State has the same effect as a domestic judgment of another State, under this clause, only so far as to preclude all inquiry into the merits. *M'Elmoyle v. Cohen*, 13 Pet., 312.

The probate of a will is not conclusive abroad to any farther extent than in the State where granted. *Darby's Lessee v. Mayer*, 10 Wheat., 465.

The judgment of one State is conclusive evidence in another, although commenced by attachment of property, the defendant having afterwards appeared and defended. *Mayhew v. Thatcher*, 6 Wheat., 129.

Nil debet (that he does not owe) is not a good plea to an action founded on a judgment of another State. *Mills v. Duryee*, 7 Cranch, 481.

The judgment of a State court has the same credit, effect and validity in every other court, within the United States which it had in the State where rendered, and only such pleas as could be made to it there can be made elsewhere. *Hampton v. M'Connel*, 3 Wheat., 284; *Hanley v. Donoghue*, 116 U. S., 1.

An action of debt will not lie against an administrator in one State, on a judgment recovered against a different administrator of the same intestate appointed in another State, under its authority. *Stacy v. Thrasher*, 6 How., 44. There is no privity between the two administrators. *Id.*

Statutes of limitation may bar judgments obtained in other States. *B'k of Ala. v. Walton*, 9 How., 522.

When A is sued in one State upon an assessment or call upon stockholders made in another State, made by the court in winding up the corporation, and A pleads the general statute of limitations of the State where the suit is brought, no Federal question as to faith and credit is raised. *Great Western Tel. Co. v. Purdy*, 162 U. S., 329.

A, B, and C resided in New York. A owed both B and C severally. He gave a mortgage on chattels in Illinois to secure B, but the same was not recorded, which by the laws of Illinois was essential to validity, as also was delivery. C attached the property in Illinois and levied upon and sold it. B was no party to this proceeding and did not intervene; but sued C in New

York for converting the property. C pleaded in bar the proceeding in Illinois, which plea was overruled by the State court. This was in violation of the full faith clause. *Green v. Van Buskirk*, 7 Wall., 139.

A court of equity may enjoin a creditor (who is within its jurisdiction) from prosecuting his debtor in another State, when proceedings have been instituted against the debtor, under a general State insolvent law; and the creditor attaches property in another State, which the insolvent law requires the debtor to transfer to his assignee for distribution. *Cole v. Cunningham*, 133 U. S., 107.

The mere construction of a statute of a State, without denying its validity, does not deny it full faith and credit; especially where no decision in the State where the statute was enacted is in conflict with such construction. *Glenn v. Garth*, 147 U. S., 360.

One who holds bonds of one State may be taxed upon them in another, where he resides. Such taxation does not violate this full-faith clause. *Bonaparte v. Tax Court*, 104 U. S., 592.

Whether a State court has denied full faith and credit to the judicial proceedings of another State is a Federal question; and whether the statute of a State is of a penal nature so that another State will not give it effect, will be determined by the Supreme Court of the United States. *Huntington v. Attrill*, 146 U. S., 657. A statute making a stockholder liable for all the debts

of the corporation is not penal; and full effect should be given to the liability in another State. *Id.* The courts of the United States, exercising original jurisdiction take judicial notice, without proof, of the laws of the several States of the United States; but the Supreme Court, exercising appellate jurisdiction, regards as matter of fact whatever was matter of fact in the State court. *Chicago, etc., R'y Co. v. Wiggins Ferry Co.*, 119 U. S., 615.

Objection that a record of authentication is incomplete must be raised in the court below; it can not be raised for the first time in the appellate court. *Carpenter v. Strange*, 141 U. S., 87.

No other authentication is necessary than that prescribed by the act of Congress. The seal of the State is sufficient to an act of the legislature. *United States v. Amedy*, 11 Wheat., 392. See, R. S. U. S., Sec. 908.

When the courts of one State construe the statutes of another State differently from their construction at home, it does not justify removal to the Federal court, but the remedy is by writ of error from the Supreme Court, when full faith is not given to the acts, etc., of the other State. *Chicago, etc., R'y Co. v. Wiggins' Ferry Co.*, 108 U. S., 18.

In a proceeding in a Federal court to enforce a liability created by a State statute, the same effect will be given to a judgment of a State court either as evidence or as a cause of action, as is given to it in the courts of

the State whose laws are invoked in the enforcement. *Chase v. Curtis*, 113 U. S., 452.

S. sued a railway company in Kansas for wages in justice's court and recovered all he claimed. The company appealed to the district court. When called for trial the company asked continuance on the ground that a creditor of Sturm had sued him in an Iowa court, of which State the company was also a corporation, and recovered a judgment there from which an appeal had been taken which was still pending and that in that action the defendant corporation had been garnisheed for the same debt as that on which the suit was brought. Motion for stay and for new trial denied. *Held*, that the Iowa court had jurisdiction and the Kansas courts did not give the Iowa proceedings due faith and credit, for which reason judgment was reversed. *Chicago, etc., R'y Co. v. Sturm*, 174 U. S., 710.

In an action begun in New York by the plaintiff against a former husband to recover alimony awarded by a decree of a court of New Jersey, the New York court denied the relief on the ground that the decree was *erroneous*, according to the law and practice of New Jersey. *Held*, that the New York court should have given full faith and credit to the judgment, leaving the defendant to seek his remedy of reversal for errors in the courts of New Jersey. *Laing v. Rigney*, 160 U. S., 531.

Liability of stockholders for debts of corporation, when enforceable by courts of other States.—1. The

liability of a stockholder, fixed by the laws of the State of the domicile of the corporation of another State, is *contractual* and not *penal* in its nature and may be sued for in the Federal courts of another State where the stockholder resides. *Whitman v. Oxford National Bank*, 176 U. S., 559. See, *ante*, p. 249.

2. And when the judgment of a court of the State of domicile of the corporation has been rendered and is conclusive upon the stockholder who is liable, the courts of other States must give full faith and credit to such judgments. *Hancock National Bank v. Farnum*, 176 U. S., 640. *Huntington v. Attrill*, 146 U. S., 657.

PRIVILEGES AND IMMUNITIES OF CITIZENS.

SECTION 2. "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

NOTE.—*What are privileges and immunities?*—The Supreme Court will not describe and define these privileges and immunities in a general classification, preferring to decide each case as it arises. *Conner v. Elliott*, 18 How., 591; *Ward v. Maryland*, 12 Wall., 418, 430; *Blake v. McClung*, 172 U. S., 248.

The *privileges and immunities* of citizens guaranteed by the Constitution did not (as the Constitution was prior to the late amendments) apply to free negroes,

whose ancestors were brought to this country and sold as slaves. *Dred Scott v. Sandford*, 19 How., 393.

It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them in other States; it gives them the right of free ingress into them and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said no provision of the Constitution has tended so strongly to constitute the citizens of the United States one people as this. *Paul v. Virginia*, 8 Wall., 168, 180.

The privileges and immunities which this clause secures are those common to the citizen, not such special privileges as a State may give its citizens or some of them, such as the right to fish in public waters. *Paul v. Virginia*, 8 Wall., 168.

This clause does not vest the citizens of one State with any interest in the common property of the citizens of other States. The citizens of a State may be authorized to plant oysters in the soil of tide waters within the

State, and citizens of other States may be forbidden. *McCready v. Virginia*, 94 U. S., 391.

This clause does not prevent a State from imposing a tax on all sales made by auction in it (except by importers of imported goods in the original packages), and where such tax is imposed on its own citizens, it may be imposed in the same manner and to the same extent on citizens of other States. *Woodruff v. Parham*, 8 Wall., 123. So an ordinance of a city imposing a license tax of \$200 upon dealers in beer or ale by the cask, not manufactured in that city, is valid. It does not discriminate against citizens of other States. *Downham v. Alexandria*, 10 Wall., 173.

Instances of statutes repugnant to this section, as depriving citizens of their privileges and immunities.—It is not in the power of a State, when establishing regulations for the conduct of private business of a particular kind, to give its own citizens essential privileges which it denies to other States. *Blake v. McClung*, 172 U. S., 239.

A law of a State which provides that in case of foreign corporations carrying on business in the State, and becoming insolvent, resident creditors shall be preferred to non-resident creditors, is repugnant to this provision of the Constitution. *Blake v. McClung*, 172 U. S., 239.

This case (*Blake v. McClung*, 172 U. S., 239) was again before the court in 176 U. S., 59, the judgment

rendered below not being in conformity to the decision and mandate, and again it is declared that creditors, who are citizens of the United States are entitled to stand on the same plane with resident creditors in the distribution of the estate of a foreign corporation. *Blake v. McClung*, 176 U. S., 59. See *Sully v. Am. Nat. Bk.*, 178 U. S., 289.

The due process clause of the 14th Amendment does not regulate practice in the State courts nor control procedure therein; and all its requirements are complied with when the person condemned or whose rights are adjudicated has had sufficient notice and adequate opportunity to defend. *Louisville, etc., Co. v. Schmidt*, 177 U. S., 230. In this case the point of objection was that the company had been precluded from proving defenses not pleaded. To the general proposition, the same ruling is in *Iowa Cent. R'y v. Iowa*, 160 U. S., 389; *Wilson v. North Carolina*, 169 U. S., 586.

A Maryland statute provided that resident traders should take out and pay for licenses to carry on business at one rate and that non-residents should pay at a higher rate, or be punished for doing business. *Held*, that the statute was void, so far as it conflicted with this provision as to privileges and immunities. The non-resident may lawfully sell or offer or expose for sale, any goods which permanent residents might lawfully sell or offer or expose for sale, without being subjected to any higher

tax or excise than that exacted by law of permanent residents. *Ward v. Maryland*, 12 Wall., 418, 430.

The citizen has a right to come to the seat of government to press his claims and seek its protection, independent of the will of any State over whose soil he may pass in coming or going. *Crandall v. Nevada*, 6 Wall., 35, 44.

No State can by any law, subsequent to the Constitution, make a foreigner or any other class of persons citizens of the United States, nor entitle them to the rights and privileges secured by the Federal Constitution. *Dred Scott v. Sandford*, 19 How., 393.

The right of the people of one State to take what is their property into a territory of the United States and there hold it as property is applicable to property held in slaves in a State where slavery exists by law. *Dred Scott v. Sandford*, 19 How., 393.

An act of Congress prohibiting slavery in a territory of the United States held unconstitutional. *Dred Scott v. Sandford*, 19 How., 393.

Instances where State statutes are held not repugnant to those provisions.—The provision in the 14th Amendment that “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” does not deter the State from passing such laws as it deems necessary to regulate the privileges and immunities of its own citizens and as do not abridge their privileges as citizens of the United

States. A State may prescribe what bodies may be organized to constitute its organized militia, and forbid others from organizing. *Presser v. Illinois*, 116 U. S., 252.

The privileges and immunities of citizens of the United States do not necessarily include all the rights protected by the first eight amendments to the Constitution of the United States. A State may abolish the grand jury system or provide for a charge of crime without the presentment or indictment of a grand jury, or may provide for a jury of less than twelve men to try one accused of crime. *Maxwell v. Dow*, 176 U. S., 581.

A uniform tax on all sales by auction whether by citizens or non-residents, imposed by ordinance of a city, is not repugnant to this clause. *Woodruff v. Parham*, 8 Wall., 123.

A State statute which compels peddlers of goods to take out license, under penalty, making no discrimination between residents or products of the State and those of other States, does not violate this section. *Emert v. Missouri*, 156 U. S., 296.

The law of Louisiana, which gives the community of gains between married persons, does not apply when the marriage is contracted and the parties reside outside of that State, even to lands owned in Louisiana. This is a right which Louisiana may regulate, not one of the per-

sonal rights of a citizen within the meaning of the Constitution. *Connor v. Elliott*, 18 How., 591.

The Iowa statute which provides that any one having Texas cattle shall be liable for damages for allowing them to run at large and spread the "Texas Fever" does not conflict with this section of the Constitution. *Kim-mish v. Ball*, 129 U. S., 217.

The admission of a person to the practice of law in the courts of a State is not a privilege or immunity which a State may not deny. *In re Lockwood*, 154 U. S., 116; *Bradwell v. The State*, 16 Wall., 130. As to privileges and immunities as affected by the 13th and 14th Amendments see *Slaughter-House Cases*, 16 Wall., 36.

A general tax laid on all property alike, as where coal is sent from one State to another to be sold, and there becomes intermingled with the property of that State, does not violate this clause of the Constitution. *Brown v. Houston*, 114 U. S., 622.

The right to sell intoxicating liquors is not one of the privileges and immunities of citizens, protected by the Constitution. *Bartemeyer v. Iowa*, 18 Wall., 129; *Giozza v. Tiernan*, 148 U. S., 657; *Mugler v. Kansas*, 123 U. S., 623. Licenses may be granted only to residents of the State. *Id.*

A State law prohibiting the carrying of dangerous weapons abridges no constitutional privilege or immunity. *Miller v. Texas*, 153 U. S., 535.

The provision in a State law that when the defendant

is out of the State, the statute of limitations shall not run against the resident plaintiff, does not violate Section II of Article IV. *Chemung Canal Co. v. Lowery*, 93 U. S., 72.

In actions at law in Federal courts the State rule does not apply that the defendant may demur to the complaint when it appears therefrom that the statute of limitations has run. *Chemung Canal Co. v. Lowery*, 93 U. S., 72.

There is nothing in the Constitution or laws of the United States which exempts an offender, brought before the courts of a State, from trial and punishment, even though brought there by unlawful violence or by the abuse of legal process. *Ker v. Illinois*, 119 U. S., 436; *Mahon v. Justice*, 127 U. S., 700; *Cook v. Hart*, 146 U. S., 183, 190, 192.

In Louisiana it is allowed to take land for the construction of levees on the Mississippi river without compensation, as they were subject to such servitude under the former French law. Land so taken belonging to a citizen of another state gives him no claim that his privileges and immunities have been illegally taken away. *Eldridge v. Trezevant*, 160 U. S., 452.

The provision of the New York Criminal Procedure Code (Secs. 527, 555) for admitting to bail for non-capital offenses only by filing certificate of a judge as to reasonable doubt whether the judgment should stand, is not repugnant to this section. The Constitution

does not mean that what may be a privilege and immunity in one State must of necessity be so in another. *McKane v. Durston*, 153 U. S., 684.

Corporations are not citizens within the meaning of this section.—*Paul v. Virginia*, 8 Wall., 168; *Ducat v. Chicago*, 10 Wall., 410; *Norfolk, etc., R'y Co. v. Penn.*, 136 U. S., 114; *Phila. Fire Asso. v. New York*, 119 U. S., 110; *Pembina Mining Co. v. Penn.*, 125 U. S., 181.

“That invisible, intangible, artificial being, that mere legal entity, a corporation aggregate, can not sue or be sued in the courts of the United States, unless the rights of members in this respect can be exercised in their corporate name.” *Bank of U. S. v. Deveaux*, 5 Cranch, 61, 86.

An averment that the defendant is a natural citizen of the United States, and resides in Louisiana, and that the plaintiff is a citizen of France, is sufficient to give jurisdiction to a Circuit court. *Gassies v. Ballou*, 6 Pet., 761.

A corporation can not act outside the State of its creation, but by the permission of the State or county where it seeks to act. *Bank of Augusta v. Earle*, 13 Pet., 519; *Liverpool Ins. Co. v. Mass.*, 10 Wall., 566.

DELIVERY OF FUGITIVES FROM JUSTICE.

SECTION 2, ART. IV. "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

This clause of the Constitution was intended to include any offense against the law of the State in which it was committed. The right is absolute and the duty correlative; but it is not within the power of Congress nor the executive or judicial department to compel its enforcement. The duty rests solely on the honor and good faith of the States. *Kentucky v. Dennison*, Governor of Ohio, 24 How., 66; *Ex parte Reggel*, 114 U. S., 642; *Lascelles v. Georgia*, 148 U. S., 537.

Congress by the Act of February 12th, 1793 (1 Stat. at L., 392, c. 7), provided the method by which this provision could be carried into execution; and declares that, on due evidence, the nature of which is described, "It shall be the duty" of the executive to whom demand is made to give up the fugitive. These words are not mandatory but merely give expression to the moral obligation of the executive of the State to obey the Constitution on the subject. *Id.*

The prisoner was indicted on two indictments "for

being a common cheat and swindler" in Georgia. Requisition was made for his person on the governor of New York, for the crime charged in such two indictments. When delivered up, he was before trial upon those indictments, tried and convicted of forgery. He moved to quash the indictment on the ground that the offense charged in it was not the same for which he had been extradited from the State of New York. *Held*, that there was nothing in the Constitution of the United States to prevent such trial; that there was between the States no right of asylum in the international sense. *Lascelles v. Georgia*, 148 U. S., 537.

Under extradition treaties with foreign States (R. S., Secs. 5272, 5275) extradition must be negotiated through the Federal government; and under the treaty with England, a person can, when extradited, be tried only on the offense charged in the extradition papers. *United States v. Rauscher*, 119 U. S., 407.

Holmes was arrested in Vermont on a warrant or order issued by Governor Jennison of that State, directed to the sheriff of a county of Vermont setting forth that an indictment had been found in Quebec, Lower Canada, for murder, and commanding the sheriff to arrest Holmes, convey his body to some place on the border and there deliver him to the Canadian authority which might be there to receive him. A writ of *habeas corpus* was sued out of the Supreme Court of Vermont, and on the hearing the court held the imprisonment lawful.

The Supreme Court of the United States was of the opinion that the State of Vermont had no right to surrender the prisoner to a foreign State. Yet the majority of the court decided that the Supreme Court had no jurisdiction and dismissed the writ of error. *Holmes v. Jennison*, 14 Pet., 540.

FUGITIVE SLAVES, ETC.

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

The Constitution (as originally adopted) clothes the owner of a slave with entire authority to seize and recapture his slave in any State of the Union, whenever he can do so without any breach of the peace or illegal violence. *Prigg v. Penn.*, 16 Pet., 539.

An act of the State of Pennsylvania made it criminal to "take and carry away, or cause to be taken and carried away," or by fraud or false pretense "seduce or cause to be seduced," or to "attempt to take, carry away, or seduce any negro or mulatto from any part or parts of this commonwealth to any other place or places whatsoever, out of this commonwealth, with a design and intention of selling and disposing of, or of keeping and

detaining or of causing to be kept or detained, such negro, or mulatto as a slave or servant for life or for any term whatsoever; every such person or persons or abettors" were punishable. This act held repugnant to the Constitution. *Id.*

The last clause of the second section of the fourth article confers on Congress the exclusive power to legislate concerning the extradition of fugitive slaves. *Id.*

The fugitive slave act of 1793 (1 Stats. at L., 308) held constitutional. *Id.*; *Jones v. Van Zandt*, 5 How., 215.

A State law which makes it a crime to harbor a fugitive slave is not in conflict with the Constitution. The act of harboring may be an offense both against the State law and the laws of the United States. *Moore v. Illinois*, 14 How., 13.

The question whether slaves held in a slave State are made free by going into a free State with the permission of their masters is purely a question of local law, over which the Supreme Court had no jurisdiction, under the Constitution, before the amendments abolishing slavery. *Strader v. Graham*, 10 How., 82.

The ordinance of 1787 ceased to be of force after the adoption of the Constitution. *Id.*

Persons, whose ancestors were negroes of the African race imported into this country and held as slaves, can not though emancipated or born of free parents, become citizens of the United States, in the sense in which that

word is used in the Constitution as originally adopted. *Dred Scott v. Sandford*, 19 How., 393. And they can not sue as such citizens in a Federal court. *Id.*

The carrying of a person held as a slave into territory of the United States ceded to it by France did not divest the owner of his property in such slave.

The Act of Congress of March 6, 1820 (3 Stat. at L., 1545), commonly called "the Missouri Compromise," held unconstitutional and void as it forbade slavery in a portion of the territory of the United States and interfered with the right of the slave owner to go there carrying his slave property with him. *Id.*

The fugitive slave law of Sept. 18, 1850 (9 Stat. at L., p. 462), held valid. Exclusive jurisdiction of offenses against that act was vested in the district courts of the United States, and State courts or judges have no jurisdiction nor power to discharge on writ of habeas corpus any person arrested by United States authority and committed by a United States commissioner. To discharge such person when it is made known to the court or judge issuing the writ, is to violate the laws and Constitution of the United States. *Ableman v. Booth*, 21 How., 506.

The guaranty of trial by jury was intended for a state of war as well as peace; and Congress can not invest a military commission in a State not invaded nor engaged in rebellion to try, convict and sentence for any criminal offenses, a person who was neither a prisoner

of war nor a citizen of a State in rebellion. *Ex parte Milligan*, 4 Wall., 1. Such person is entitled to trial by jury. *Id.*

The provision that trials shall be held in the State where the crime shall have been committed, has reference to trials in United States courts and not to trials in State courts. *Nashville, etc., R'y Co. v. Alabama*, 128 U. S., 96.

FORMATION AND ADMISSION OF STATES INTO THE UNION.

SECTION 3, ARTICLE IV. "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress."

Rights of State when admitted.—The State of Alabama, when admitted into the Union, became entitled to the soil under the navigable waters of the State not previously granted away. *Pollard's Lessee v. Hagan*, 3 How., 212. And Congress could not afterwards grant them away. *Id.*

The new States admitted into the Union since the adoption of the Constitution have the same rights as the original States in the tide waters and lands under them within their respective jurisdictions. *Shively v. Bowlby*, 152 U. S., 48.

The lands and the tide waters within the State limits passed to the State upon its admission with the consequent right to dispose of the title as the State might think proper, subject only to the paramount right of navigation over the waters as the necessities of commerce might require. *Weber v. Board of Harbor Commissioners*, 18 Wall., 57.

The admission of a State on an equal footing with the original States in all respects, works collectively the naturalization of all those who had declared their intentions, and who had been members of the political community and were recognized as such at the time of the admission. *Boyd v. Nebraska*, 143 U. S., 135.

Upon the admission of Illinois into the Union the State became entitled to all the rights of dominion of the original States and could afterwards exercise the same powers over rivers within her limits as Delaware exercised over Blackbird Creek, and Pennsylvania over Schuylkill river. *Escanaba Co. v. Chicago*, 107 U. S., 678; *Huse v. Glover*, 119 U. S., 543, 546; *Hamilton v. Vicksburg, etc., R'y Co.*, 119 U. S., 280, 285.

The provision in the act admitting California into the Union "that all the navigable rivers within the said State shall be common highways and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost or duty, therefor," does not deprive the State of the power possessed by other States, in the absence of legislation by

Congress, to authorize the erection of bridges over navigable streams within the State. *Cardwell v. Am. Bridge Co.*, 113 U. S., 205.

The power to admit new States includes the power to acquire territory to be admitted as a State, and to maintain a government there until the territory is ripe for admission. *Dred Scott v. Sandford*, 19 How., 393.

On the admission of a State into the Union unconditionally, the territorial government is abrogated, every part of it, and no power of jurisdiction remains except that derived from State authority, and that by force and operation of the Federal Constitution and laws. *Benner v. Porter*, 9 How., 235; *McNulty v. Batty*, 10 How., 72.

Territorial property passes to State on admission.—A statute of the territory of Colorado authorized a board of managers to receive a conveyance of a site in Denver for the capitol of the territory. A conveyed by warranty deed a tract for such site to such board “for the purpose of erecting a capitol and other buildings thereon only.” The territory made no use of the land before the admission of Colorado into the Union. After its admission, A executed and put on record an instrument attempting to annul the gift and took and was in possession of the land when he brought the suit in equity praying that the board and State officers be enjoined from disturbing his possession until he should receive just compensation. *Held*, he could not maintain suit,

as all the property of the territory passed to the State; and the State, as the case showed, was about to construct buildings on the land. *Brown v. Grant*, 116 U. S., 207.

POWER OF CONGRESS OVER TERRITORIES, ETC.

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

The power to acquire and govern territories.—"The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently that government possesses the power of acquiring territory, either by conquest or by treaty." Ch. J. Marshall in *Am. Ins. Co. v. Canter*, 1 Pet., 511, 542.

Under the power of the general government to govern the territories, Congress exercises the combined powers of the Federal and State governments and may legislate directly for a territory, although the organic act contains no reservation of such power. *Id.*

"Perhaps the power of governing a territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts that it is not within the power

and jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Which ever may be the source whence the power is derived, the possession of it is unquestioned." Id.

(1) The power of Congress over the territory is general and plenary, arising from the right to acquire them; which right arises from the power of the government to declare war and make treaties of peace, and also, in part arising from the power to make all needful rules and regulations respecting the territory and other property of the United States. *

(2) This plenary power extends to the acts of the legislatures of the territories and is usually expressed in the organic acts of each by an express reservation of the right to disapprove and annul the acts of the legislature thereof.

(3) Congress has the power to repeal the act of incorporation of the Mormon Church, by virtue of its general power and, also, its reserved right in the organic act of the Territory of Utah. *Mormon Church v. United States*, 136 U. S., 1.

Subject to the limitations expressly or by implication imposed by the Constitution, the Congress has full and complete authority over a territory and may directly legislate for its government, and may nullify its enactments. The act organizing a territory is its funda-

mental law and binding upon the territorial authorities. *Nat. B'k v. Yankton Co.*, 101 U. S., 129.

“Doubtless Congress, in legislating for the territories, would be subject to those fundamental limitations in favor of personal rights, which are formulated in the Constitution, but these limitations would exist by inference and the general spirit of the Constitution from which Congress derives its powers rather than by any express and direct application of its provisions.” *Mormon Church v. United States*, 136 U. S., 44.

The personal and civil rights of the inhabitants of the territories are secured to them as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and national; their political rights are franchises which they hold as privileges in the legislative discretion of Congress. *Murphy v. Ramsey*, 114 U. S., 44. The people of the United States, as sovereign owners, have supreme power over the territories.

In the exercise of this sovereign dominion, they are represented by the government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the Constitution or are necessarily implied in its terms, or in the purposes and object of the power itself; for it may well be admitted in respect to this, as to every other power of society over its members, that it is not absolute and unlimited. *Murphy v. Ramsey*, 114 U. S., 44.

"The power to make all needful rules and regulations respecting the territory or other property belonging to the United States is not more comprehensive than the power to make all laws which shall be necessary and proper for carrying into execution" the power of the government. Yet all admit the constitutionality of territorial government which is a corporate body. *M'Culloch v. Maryland*, 4 Wheat., 316, 422.

The Dred Scott decision.—The clause in the Constitution authorizing Congress to make all needful rules and regulations respecting the territory and other property of the United States, applies only to territory within the chartered limits of some of the States when they were colonies of Great Britain, and which was surrendered by the British government to the old confederation in the treaty of peace, but has no application to territory acquired by the present Federal government. *Dred Scott v. Sandford*, 19 How., 393.

In the territory acquired by the people of the United States for their common benefit, Congress can not prohibit the citizen of any particular State from going there and taking up his home, while it permits citizens of other States to go there; and each may take his property there, and as the Constitution recognizes property in slaves, the slave owner may take his property there and hold it, the same as the owner of other chattels can take them there. Congress can not prohibit this. *Dred Scott v. Sandford*, 19 How., 393.

The United States, under the present Constitution, 24

can not acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a territory, until it has a population which in the judgment of Congress entitles it to be admitted as a State into the Union. *Dred Scott v. Sandford*, 19 How., 393.

Power over territories.—Upon the acquisition of a territory by the United States, by treaty, cession from the States, a discovery and settlement, the same title and dominion passes to the United States for the benefit of the whole people and in trust for the States to be ultimately created out of the territory. *Shively v. Bowlby*, - 152 U. S., 48.

By the treaty of March 14th, 1855, between the United States and the Cherokee nation certain lands were ceded to them, and it was provided that the lands ceded "shall in no future time be included within the territorial limits or jurisdiction of any State or territory. But they shall secure to the Cherokee nation the right of their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of persons and property within their own country belonging to their people, or such persons as have connected themselves with them; provided, always, that they shall not be inconsistent with the Constitution of the United State and such acts of Congress as have been or may be passed, regulating

trade and intercourse with the Indians," etc. *Held*, that the Cherokee nation are so far under the protection of the laws of the United States, as a State or territory, for the purpose of suing in the District of Columbia, on an administrator's bond. *Mackey v. Coxe*, 18 How., 100.

A person appointed by the President, by and with the consent of the Senate to be the judge of the district court of Alaska, under the provisions of the act of May 17th, 1884 (23 Stat. 24, c. 53, Sec. 3), is not a judge of the courts of the United States within the meaning of the tenure of office act. R. S. U. S., Sec. 1768; *McAllister v. United States*, 141 U. S., 174.

Under the provision as to the trial of offenses committed within the jurisdiction of the United States and out of the jurisdiction of any particular State, the accused was tried in Maryland for a murder committed on Mavassa island, a small island in the Carribean sea, over which the United States had exercised jurisdiction since 1859, it being occupied by an American company, for its phosphates or guano deposits. *Jones v. United States*, 137 U. S., 202.

In 1815 Congress levied a direct tax on the States. By a later act, of the same session, a direct tax was also levied upon the District of Columbia. This tax was held valid, as Congress has power to lay and collect taxes, duties, imposts and excises. In the course of the opinion Chief Justice Marshall uses these words: "This

grant (of power to lay and collect taxes, etc.) is general, without limitation as to place. It, consequently, extends to all places over which the government extends. If this could be doubted, the doubt is removed by the subsequent words which modify the grant. These words are, 'But all duties, imposts, and excises, shall be uniform throughout the United States.' It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power then to lay and collect duties, imposts, and excises may be exercised, and must be exercised throughout the United States. Does this term designate the whole, or any portion of the American empire? Certainly, this question can admit of but one answer. It is the name given to our great republic, which is composed of States and territories. The District of Columbia, or the territories west of the Mississippi, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties and excises, should be observed in the one, than in the other." But it was held that as Congress had power of exercising exclusive legislation in all cases whatsoever, it had the power to lay direct taxes on the basis of population. *Loughborough v. Blake*, 5 Wheat., 317.

The courts held in the territories by judges appointed by the President are not courts of the United States, but are merely legislative courts created by virtue of the

clause which authorizes Congress to make all needful rules and regulations respecting the territory, etc. *Clinton v. Englebrecht*, 13 Wall., 434.

The theory upon which the various governments for portions of the territory of the United States have been organized has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of national authority, and with certain fundamental principles established by Congress. *Clinton v. Englebrecht*, 13 Wall., 434, 441.

The right of the people of the territories to trial by jury.—In a criminal prosecution in the District of Columbia the accused claimed the right of trial by jury. In this case, the Court says: "As the guaranty of a trial by jury, in the third article, implied a trial in that mode and according to the settled rules of the common law, the enumeration in the Sixth Amendment of the rights of the accused in criminal prosecutions is to be taken as a declaration of what these rules were, and is to be referred to the anxiety of the people of the States to have in the supreme law of the land, and so far as the agencies of the general government are concerned, a full and distinct recognition of those rules, as involving the fundamental rights of life, liberty and property. This recognition was demanded and secured for the benefit of all the people of the United States, as well as those permanently or temporarily residing in the District of Columbia as those residing or being in the

several States. There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of the District of Columbia may be lawfully deprived of the benefit of any of the constitutional guaranties of life, liberty and property; especially of the privilege of trial by jury in criminal cases." "We can not think that the people of this district have in that regard less rights than those accorded to the people of the territories of the United States." *Callan v. Wilson*, 127 U. S., 540, 549, 550; *Thompson v. Utah*, 170 U. S., 343.

An act of the territory of Iowa dispensing with a jury in a certain class of cases was held contrary to the 7th Amendment, and void, the Constitution having been extended to the territory by statute of Congress. *Webster v. Reid*, 11 How., 437.

The statute of Utah, while a territory, which provided that "in all civil cases a verdict may be rendered on the concurrence therein of nine or more members," is valid; if not so under the 7th Amendment to the Constitution it is so as violating the provisions of the act of Sept. 9, 1850, c. 51, admitting Utah as a territory and extending the Constitution there so far as applicable. *Am. Pub. Co. v. Fisher*, 166 U. S., 464; *Springville v. Thomas*, 166 U. S., 707. It is intimated that Congress could not deprive one of this common-law right even in a territory. *Id.*; *Thompson v. Utah*, 170 U. S., 343.

Where the country occupied by one of the Indian

tribes is not within a State, Congress may enact laws to punish offenses committed there either by whites or Indians. *U. S. v. Rogers*, 4 How., 567.

Where a provisional government had been erected by the President in California between the date of the treaty of peace (Feb. 3, 1848) and the date when a collector of the post entered upon his duties and under such provisional government duties had been exacted upon imports from foreign countries, they were not illegally exacted and can not be recovered back. *Cross v. Harrison*, 16 How., 164.

The civil government so erected by the President by virtue of the power of conquest did not cease upon the ratification of the treaty but continued, without violation of the Constitution or laws of the United States, until Congress provided otherwise by legislation. *Id.*, 195.

The following clause in Justice Wayne's opinion is claimed to have some significance. He says, "The assertion rather than argument, 'that there was neither treaty nor law permitting the collection of duties,' has been answered, it having been shown that the ratifications of the treaty made California a part of the United States, and that as soon as it became so, the territory became subject to the acts which were in force to regulate foreign commerce with the United States, after those had ceased which had been instituted for its regulation as a belligerent right." *Id.*, 198.

Power to sell and dispose of lands.—The power of

Congress to "dispose" of the public lands is not limited to sales, but it may lease them. *United States v. Gratiot*, 14 Pet., 526.

The term territory as here used is merely descriptive of the one kind of property and is equivalent to the word lands. And Congress has the same power over it as over any other property belonging to the United States, and this power is vested in Congress without limitation, and has been considered the foundation upon which the territorial governments rest. *Id.*

GUARANTIES TO STATES.

SECTION 4, ARTICLE IV. "The United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the Executive (when the legislature can not be convened), against domestic violence."

1. This section provides that "the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion," etc.

2. Under this article of the Constitution it rests with Congress to decide what government is established in a State. For as the United States guaranties to each State a republican form of government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not.

3. The decision of Congress is binding on every other department of government.

4. Congress may delegate this power to the President, and when he decides which of two contending and alleged State organizations constitute the State government, his decision, under the Act of Feb. 28th, 1795 (1 Stats. at L., 424), is conclusive on the courts of the United States. *Luther v. Borden*, 7 How., 33, 42.

The relation of States to the Union.—(1) When Texas became one of the States of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The Act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The Union between Texas and the other States was as complete, as perpetual, and as indissoluble as the Union between the original States.

(2) The Ordinance of Secession was therefore void, absolutely null as a transaction under the Constitution.

(3) Texas, in legal contemplation, continued to be a State in the Union.

(4) When Texas attempted to secede and entered into a hostile confederacy and waged war upon the United States her rights as a member of the Union were suspended.

(5) These new relations imposed new duties on the

United States, first, to suppress the rebellion; second, to re-establish the Union.

(6) The authority for performance of the second obligation was derived from the obligation of the United States to guaranty to every State in the Union a republican form of government.

(7) The power to carry into effect the guaranty clause is primarily a legislative power, and resides in Congress. For, as the United States must necessarily guaranty to each State a republican government, Congress must necessarily *decide* what government is established in the State, before it can decide whether it is republican in form, or not. *Texas v. White*, 7 Wall., 700, 726, 730.

The Kentucky election case.—The guaranty of a republican form of government to each State by Art. IV, Sec. 4, does not confer on the Supreme Court of the United States jurisdiction to review the decision of the highest court of a State sustaining the determination of a canvassing board or tribunal created under the State Constitution. It does not deny the right of the people to choose their own officers. *Taylor v. Beckham*, 178 U. S., 548.

Justice Brewer with Brown dissented from the view that the court had no jurisdiction but held that the decision of the Kentucky court should be affirmed. He cited the cases of *Kennard v. Louisiana*, 92 U. S., 480; *Foster v. Kansas*, 112 U. S., 201, and *Boyd v. Nebraska*,

143 U. S., 135, as instances where the court had entertained jurisdiction, to inquire whether one had been deprived of office without due process of law. *Id.*

ARTICLE V.

AMENDMENT OF CONSTITUTION.

"The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

As to the date of ratification of each of the amendments to the Constitution, see *post*, p. 386.

ARTICLE VI.

PUBLIC DEBTS—CONSTITUTION, ETC., SUPREME.

"All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

"The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."

Acts of Congress prevail over State laws, etc.—When a State statute and a Federal statute operate upon the same subject matter and prescribe different rules, and the Federal statute is one that Congress can pass the State statute must give way. *Gulf, etc., R'y Co. v. Hefley*, 158 U. S., 98.

A law of Maryland, imposing a tax on a branch of the United States Bank, held invalid. *M'Culloch v. Maryland*, 4 Wheat., 316. "The government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, declared it by saying, "this Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land." *Id.*, 405, 406.

The States must conform to the decisions of the Supreme Court of the United States as to the unconstitutionality of an act. *Cook v. Moffat*, 5 How., 295, 405.

The act of Congress of Feb. 17th, 1793, providing for the enrollment and license of persons engaged in the coasting trade is the supreme law of the land. *Sinnot v. Com'rs, etc., of Mobile*, 22 How., 227. The act of the Alabama legislature requiring vessels in such trade to register at a State office, under penalty, is void. *Id.* *Foster v. Same*, 22 How., 244.

The government of the United States has jurisdiction over every foot of its soil and acts directly upon each citizen. *In re Debs*, 158 U. S., 564.

When courts give effect to treaties.—A treaty is pri-

marily a compact between independent nations. It depends for the enforcement of its provisions on the interest and honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the courts have nothing to do and can give no redress. But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and are capable of enforcement as between the parties in the courts of the country. *Ex parte Cooper*, 143 U. S., 472, 501.

When a question is pending between the government of the United States and a foreign power and negotiations are still going on, the courts should not interfere by process to determine whether the government was right or wrong. *Ex parte Cooper*, 143 U. S., 472.

Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. *Robb v. Connolly*, 111 U. S., 624, 637; *Gibson v. Mississippi*, 162 U. S., 565, 586.

Where one was imprisoned under the warrant of a district judge to abide the order of the President for the purpose of being extradited as a fugitive from the justice of France, under a convention with that country, the Supreme Court will not issue a writ of *habeas corpus* to inquire into the cause of his commitment. *In re Metzger*, 5 How., 176.

Acts of Congress and treaties.—A treaty is the supreme law of the land and binds courts as much as any act of Congress. *U. S. v. The Peggy*, 1 Cranch, 103; *Strother v. Lucas*, 12 Pet., 410; *Fellows v. Blacksmith*, 19 How., 366. By the Constitution, a treaty and a statute are put on the same footing; and if the two are inconsistent, the one last in date will control if the treaty be self-executing. *Whitney v. Robertson*, 124 U. S., 190; *Kelley v. Hedden*, 124 U. S., 196. A treaty may supersede a prior act of Congress; and an act of Congress may supersede a prior treaty. *The Cherokee Tobacco*, 11 Wall., 616. Congress is bound to regard public treaties and has *no power to nullify titles confirmed many years before*. *Reichart v. Felps*, 6 Wall., 160.

Acts of Congress may abate treaties.—Treaties are subject to such acts of Congress as may be passed for their enforcement, modification or repeal. *Edye v. Robertson*, 112 U. S., 580; *Whitney v. Robertson*, 124 U. S., 190; *Chinese Exclusion Cases*, 130 U. S., 581; *Botiller v. Dominguez*, 130 U. S., 238; *Horner v.*

United States, 143 U. S., 207; *Fong Yog Ting v. United States*, 149 U. S., 698. *Thomas v. Gray*, 169 U. S., 264. If a statute is in conflict with a treaty of the United States with a foreign power, the courts are bound to follow the statute. *Botiller v. Dominguez*, 130 U. S., 238. Where there is a conflict between the treaties with the Cherokees and later statutes, the latter will prevail. *United States v. Old Settlers*, 148 U. S., 427.

Treaties paramount over State Constitutions and laws.—Every treaty, while in force, is superior to the Constitution or laws of a State. *Hauenstein v. Lynham*, 100 U. S., 483; *Ware v. Hylton*, 3 Dall., 199.

It is the law of the land, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. *Ex parte Cooper*, 143 U. S., 472.

A statute of New York giving to Livingston and Fulton exclusive right to navigate all waters in that State by steam or fire, held void, as repugnant to power granted to Congress. *Gibbons v. Ogden*, 9 Wheat., 1. "The nullity of any act, inconsistent with the Constitution, is produced by the declaration that the Constitution is the supreme law." *Id.*, 210.

The treaty-making power of the United States extends to all proper subjects of negotiation between this government and other nations. *De Geoffrey v. Riggs*, 133 U. S., 258.

A treaty is the law of the land, and its provisions must

be regarded as equivalent to an act of the legislature, when it operates directly on a subject, yet, if it be merely a stipulation for future legislation, the courts must await the action of the legislature upon it, before they can give it effect. *Foster v. Neilson*, 2 Pet., 253, 314.

Virginia passed an act Oct. 20, 1877, to sequester British property. It provided, "That it shall be lawful for any citizen of Virginia, owing money to a subject of Great Britain, to pay the same, or any part thereof, from time to time, as he should think fit into the loan office, taking thereout a certificate for the same in the name of the creditor, with an endorsement under the hand of the commissioner of said office, expressing the name of the payer; and shall deliver such certificate to the governor and council, whose receipt shall discharge him from so much of said debt."

The fourth article of the definitive treaty of peace between the United States and Great Britain of Sept. 3, 1783 (8 Stats. at L., 80), agreed "that creditors of either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts before contracted. It was held that the British creditors of citizens of Virginia could recover debts previously contracted, notwithstanding the debtors had paid the sums due into the loan office under the Virginia law." There can be no limitation on the power of the people of the United States. By their authority the

State Constitutions were made, and by their authority the Constitution of the United States was established; and they had the power to abolish the State Constitutions,—to make them yield to the general government, and to treaties made by their authority. A treaty can not be the supreme law of the land, that is, of all the United States, if any act of a State legislature can stand in its way. *Ware v. Hylton*, 3 Dall., 199, 236.

The property of British corporations, in this country, is protected by the 6th article of the treaty of 1783 in the same manner as that of natural persons, and the act of the legislature of Vermont granting lands in that State, which belonged to The Society for Propagating the Gospel in Foreign Parts, a British corporation, to the respective towns in which the lands lie, is void, and conveys no title. *Society for Propagation of Gospel v. New Haven*, 8 Wheat., 464.

The treaty power of the United States extends to the protection to be afforded to citizens of a foreign country owning property in this country, and to the manner in which it may be transferred, devised or inherited. *De Geofroy v. Riggs*, 133 U. S., 258.

“A treaty with Switzerland gave the citizens of that country owning lands in fee to whom lands in this country descended the right to recover and sell the lands and withdraw and export the proceeds.” This was the supreme law and removed all incapacity to sell imposed

by State law. *Hauenstein v. Lynham*, 100 U. S., 483, 488.

A statute of Maryland limited the right of aliens to hold lands. The treaty of amity and commerce with France of 1778 (8 Stats. at L., 13, Art. 11) enabled the subjects of France to purchase and hold lands in the United States. The State law is inoperative. *Chirac v. Chirac*, 2 Wheat., 259.

A treaty is a law of the land, of which all courts, State and National, must take judicial notice. Under an extradition treaty, a prisoner, given up by another nation as a fugitive charged with murder, can not be placed on trial for any other offense. *United States v. Rauscher*, 119 U. S., 407.

The United States made a treaty with an Indian tribe in North Carolina. A subsequent dispute as to boundary was settled by another treaty. This was binding on the State and on private rights; and grants of land by the State within the Indian territory were held void, though the fee was in the State subject to Indian right of occupancy. *Lattimer v. Poteet*, 14 Pet., 4.

The law of Georgia, which subjected to punishment all white persons residing within the limit of the Cherokee nation, authorized their arrest and removal therefrom and trial in the State courts, is held unconstitutional because repugnant to treaties made with the Cherokees. *Worcester v. Georgia*, 6 Pet., 515.

By treaty of Nov. 3, 1762, France ceded to Spain the

province of Louisiana. A grant of land made after that date was void, unless ratified by Spain. Long continued possession might justify presumption of such ratification. *United States v. D'Auterive*, 10 How., 609; *Same v. Pillerin*, 13 How., 9; *Same v. Rillieux*, 14 How., 189; *Same v. Gusman*, 14 How., 193; *Same v. Ducros*, 15 How., 38.

ARTICLE VII.

"The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

"Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In Witness whereof we have hereunto subscribed our names.

(Signed by)

"Go. Washington,

"Presidt. and Deputy from Virginia,"

and by thirty-nine delegates.

AMENDMENTS.

In addition to, and amendment of, the Constitution of the United States of America, proposed by Congress and ratified by the legislatures of the several States, pursuant to the Fifth Article of the original Constitution.

The first ten amendments to the Federal Constitution contain no restrictions on the powers of States, but were intended to operate solely on the Federal government. *Barron v. Baltimore*, 7 Pet., 243; *Livingston v. Moore*, 7 Pet., 469; *Fox v. Ohio*, 5 How., 410; *Twitcheil v. Com.*, 7 Wall., 321; *Edwards v. Elliott*, 21 Wall., 532; *United States v. Cruikshank*, 92 U. S., 542, 552; *Spies v. Illinois*, 123 U. S., 131; *In re Sawyer*, 124 U. S., 200, 219; *Eilenbecker v. Dist. Court*, 134 U. S., 31; *Davis v. Texas*, 139 U. S., 651; *Thorington v. Montgomery*, 147 U. S., 490; *Miller v. Texas*, 153 U. S., 535; *Ex parte Reggel*, 114 U. S., 642; *Iowa C. R. Co. v. Iowa*, 160 U. S., 339; *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S., 226; *Missouri v. Lewis*, 101 U. S., 22.

ARTICLE I.

FREEDOM OF RELIGION, SPEECH, PRESS, AND RIGHT OF PETITION.

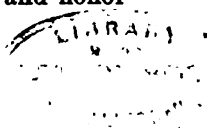
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The establishment of religion.—The religious establishment of England was adopted in the Colony of Virginia, and by it the freehold of church lands was in the parson. The act of the legislature of 1776 confirmed to the church its right to these lands. Subsequent statutes which sought to divert the rights as confirmed and vest them in a corporation held unconstitutional. The statute of Virginia confirming the titles to church lands was not an infringement of any rights secured under the Constitution. *Terrett v. Taylor*, 9 Cranch, 43.

The common law of England so far as it respects the erection of churches of the Episcopal persuasion and the corporate capacity of the parson to take in succession was recognized in the province of New Hampshire prior to the revolution. *Pawlet v. Clark*, 9 Cranch, 292. A grant to the church vested the fee in the parson. *Id.*

A statute of the United States, for the territory of Utah, provided that no bigamist, polygamist or any person cohabiting with more than one woman, etc., should be entitled to vote. This held valid. *Murphy v. Ramsey*, 114 U. S., 15.

The above clause, "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof," does not make void an act of a territory excluding from offices of trust and honor



those who disobey the law in practicing polygamy. *Davies v. Beason*, 133 U. S., 333.

The pretense of religious belief can not deprive Congress of the power to prohibit polygamy and all other like offenses in a territory. Congress may provide for the winding up of a so-called religious corporation incorporated by territorial acts. It possesses all the chancery powers necessary to the proper superintendence and direction of any gift to a charitable use. *Mormon Church v. U. S.*, 136 U. S., 1.

A party's religious belief does not shield him for committing acts which violate the laws of the land. He can not plead his faith to justify polygamy. *Reynolds v. United States*, 98 U. S., 145; *Cannon v. United States*, 116 U. S., 55; *Murphy v. Ramsay*, 114 U. S., 15.

The Constitution makes no provision for protecting the citizens of the respective States in their religious liberties; this is left to the State Constitutions and laws; nor is there any prohibition, imposed on the States by the Federal Constitution in this respect. *Per-moli v. First Municipality*, 3 How., 582.

A devise upon a trust to establish and maintain a college for the education of indigent or poor boys is a charitable trust, although the will of the testator excludes all ecclesiastics, missionaries, and ministers of the gospel, of all sects, from any trust or duty concerning the college or from entry into it even as visitors. *Vidal v. Girard's Executors*, 2 How., 127.

There are many decisions of the Supreme Court on questions relating to the rights of religious societies; but they do not turn on constitutional questions.

An agreement by the commissioners of the District of Columbia, to maintain a hospital, made with the Sisters of the Roman Catholic church, for poor patients of the District of Columbia, to be paid for by appropriations made by Congress, does not conflict with the 1st Amendment that Congress shall make no law respecting the establishment of religion. *Bradfield v. Roberts*, 175 U. S., 291.

The appropriation by Congress of money to a hospital for the treatment of poor patients, under a contract, *held*, not an appropriation to religious societies, in violation of the Constitutional provision respecting an establishment of religion. *Bradfield v. Roberts*, 175 U. S., 291.

ARTICLE II.

THE RIGHT TO KEEP AND BEAR ARMS.

"A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

The right to bear arms is not granted by the Constitution; nor in any manner dependent upon that instru-

ment for its existence. The Second Amendment means no more than that Congress shall not infringe the right. *United States v. Cruikshank*, 92 U. S., 542. This amendment is a limitation only on the powers of Congress and the National government. But in view of the fact that all citizens capable of bearing arms constitute the reserved military force of the National government, as well as in view of its general powers, the States can not prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource in maintaining the public security. State legislatures may, however, enact statutes to control and regulate all organizations, drilling, and parading of military bodies and associations except those which are authorized by the militia laws of the United States. *Presser v. Illinois*, 116 U. S., 252..

ARTICLE III.

QUARTERING OF SOLDIERS IN HOUSES.

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."

Of this amendment Story says: "Its plain object is to secure the perfect enjoyment of that great right of the common law, that a man's house shall be his own castle privileged against all civil and military in-

trusions. The billeting of soldiers in time of peace upon the people has been a common resort of arbitrary princes, and is full of inconvenience and peril. In the Petition of Right (4 Charles I.), it was declared by Parliament to be a great grievance." Story's Com. on Constitution, 5 ed., Sec. 1900. As to the effect of *martial law*, see, *In re Milligan*, 4 Wall., 2, 124, 141.

ARTICLE IV.

SECURITY AGAINST SEARCHES AND SEIZURES.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Searches and seizures.—It does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment. A compulsory production of a party's private books and papers to be used against himself or his property in a criminal proceeding, or for a forfeiture, is within the spirit of the amendment. *Boyd v. United States*, 116 U. S., 616.

Searches and seizures in the mails.—Letters and sealed packages in the mails subject to letter postage,

can be opened and examined only under like warrant issued upon oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers thus closed against inspection, wherever they may be. *Ex parte Jackson*, 96 U. S., 727.

Applies only to National government.—This provision does not apply to searches and seizures made by State authorities; and when letters of an accused person have been seized and used against him in a trial in a State court, no Federal question is presented by such procedure. *Spies v. Illinois*, 123 U. S., 131. Especially so, when the objection to the admission of such letters was not made, at the trial, but for first time in the State Supreme Court. *Id.*

A State statute, which prohibits oyster fishing in modes that would destroy the beds altogether, is within State power of regulation, and it may declare vessels illegally engaged forfeited, and though it does not provide for seizure by warrant on oath that question can not be raised in the Supreme Court of the United States. *Smith v. Maryland*, 18 How., 71.

Warrants of distress under Federal law.—An act of Congress (3 Stats. at L., 592), authorized the Solicitor of the Treasury to issue warrants of distress against the

property of a revenue officer, for the amount found due on adjusting his accounts in the Treasury department. This act held constitutional, it being usual in English and American law to authorize such provisions. *Murray's Lessee v. Hoboken Land Co.*, 18 How., 272.

ARTICLE V.

SAFEGUARDS TO ACCUSED PERSONS.

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Exception in time of war or public danger applies to militia only.—In the Fifth Article of the Amendments to the Constitution of the United States providing that no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service

in time of war or public danger, the words, "when in actual war or public danger" apply to the militia only. *Johnson v. Sayre*, 158 U. S., 109.

Filing informations in cases of infamous crime.—The practice of *filing informations* against persons accused of *infamous crimes*, is in violation of their right under the Fifth Amendment, and persons convicted upon such information of an infamous crime and imprisoned upon the sentence are entitled to discharge on *habeas corpus*. An infamous crime, within the provisions of the Fifth Amendment, includes one punishable by imprisonment for a term of years with or without hard labor. *Ex parte Wilson*, 114 U. S., 415; *Mackin v. United States*, 117 U. S., 348; *Parkinson v. United States*, 121 U. S., 281; *United States v. De Walt*, 128 U. S., 393.

An acquittal on a criminal information for violation of the revenue laws is a good plea in bar to a civil information for the forfeiture of goods, arising upon the same acts. *Coffey v. United States*, 116 U. S., 436; *Boyd v. United States*, 116 U. S., 634.

Indictment not amendable.—The declaration that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury" is jurisdictional. After the indictment has been presented there can be no amendment of the same in the body of the indictment. *Ex parte Bain*, 121 U. S., 1.

Admiralty cases not criminal.—An information filed in the district court to enforce the forfeiture of a vessel for exporting arms and ammunition contrary to U. S. Stats. at L., 369, is a civil cause of admiralty and maritime jurisdiction, and not to be tried by a jury. *United States v. La Vengeance*, 3 Dall., 297.

Trial by jury—criminal procedure.—The power given Congress to make rules for the government of the land and naval forces, authorizes the passing by Congress of laws to punish military and naval offenses, without indictment by grand jury or trial by jury, and under such laws the President may direct the imprisonment of one convicted by a naval court martial of attempt to desert. *Dynes v. Hoover*, 20 How., 65.

The guaranty of trial by jury is of force as well in time of war as in time of peace, and can not be suspended nor a citizen tried and convicted by a military commission in a State not in insurrection, and where the courts of the United States are regularly sitting. Neither the President, nor Congress, nor the judiciary, can disturb the safeguards to liberty which this provision of the Constitution affords. *Ex parte Milligan*, 4 Wall., 1.

In a trial in the Federal courts, the rule is that the court may express its opinion upon the facts of the case. *McLanahan v. Ins. Co.*, 1 Pet., 182; *Games v. Stiles*, 14 Pet., 322; *Mitchell v. Harmony*, 13 How., 115.

An act may be an offense against the United States

and against a law of a State, and not for that reason contravene the Federal Constitution. So held of a statute of Illinois making it a crime to harbor or secrete a fugitive negro slave. *Moore v. Illinois*, 14 How., 13.

The Act of May 15, 1820, which authorizes the Solicitor of the Treasury to issue a warrant of distress against the property of a revenue officer for the amount found due on adjusting his accounts is constitutional. *Murray's Lessees v. Hoboken, etc., Co.*, 18 How., 272.

The Fifth Amendment of the Constitution relating to criminal prosecutions, was not designed as limits upon the State governments but exclusively as restrictions upon Federal power. *Twitchell v. Commonwealth of Pennsylvania*, 7 Wall., 321.

The organic law of the territory of Iowa, by express provisions and by reference, extended the laws of the United States, including the Ordinance of 1787, over the territory so far as applicable. This preserved the right of trial by jury there. *Webster v. Reid*, 11 How., 437, 460.

"The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. One of the strongest objections originally taken against the Constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases. As soon as the Constitution was adopted, this right was

secured by the Seventh Amendment of the Constitution proposed by Congress, which received an assent of the people so general as to establish its importance as a fundamental guaranty of the rights and liberties of the people." Story, J., in *Parsons v. Bedford*, 3 Pet., 433.

What is "due process of law?"—Congress, in the exercise of its power "to lay and collect taxes, duties, imposts and excises," may, to enforce their payment, authorize the distraint and sale of either real or personal property, and this is not depriving of property without due process of law. *Springer v. United States*, 102 U. S., 586. See, *ante*, p. 302.

A bill in equity to declare invalid and enjoin enforcement of a judgment obtained against the defendant for a tort committed under military authority, in accordance with the usages of civilized warfare, is "due process of law," and not in conflict with the Federal Constitution. *Freeland v. Williams*, 131 U. S., 405. See, *ante*, p. 192.

Compelling to be witness against self in criminal cases.—The provision of the Act of February 11, 1893 (c. 83, 27 Stat. at L., 443), "that no person shall be excused from attending and testifying, or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of

him may tend to criminate him or subject him to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena or the subpoena of either of them," affords absolute immunity against prosecution, Federal or State, for the offense to which the question relates, and, hence, the witness can not shelter himself from answering behind this provision of the Constitution. *Brown v. Walker*, 161 Wis., 591.

Where a person is under examination before a grand jury, in an investigation into certain alleged violations of the Interstate Commerce Act of Feb. 4, 1887 (24 Stats. at L., 379, and the Act of March 2, 1889, 25 Stats. at L., 855), he is not obliged to answer questions where he states that his answers might tend to criminate him, although the Revised Statutes, § 860, provide that no evidence given by him shall in any manner be used against him, in any court of the United States in any criminal proceeding. No statute that does not afford complete immunity from future prosecution can

supplant the privilege conferred by the Constitution, *Counselman v. Hitchcock*, 142 U. S., 648. The statute of 1893, above referred to, appears to have been passed in view of this decision.

Seizure of private papers to be used as evidence.—The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to making him testify against himself, and in a prosecution for a crime, penalty or forfeiture, is equally within the prohibition of the Fourth Amendment. *Boyd v. United States*, 116 U. S., 616.

The Fourth and Fifth Amendments run into and shed light upon each other. When the thing forbidden in the Fifth Amendment, viz., compelling a man to be a witness against himself, is the object of a search and seizure of his private papers, it is an unreasonable "search and seizure" within the Fourth Amendment. Search and seizure of a man's private papers to be used in evidence to convict him of a crime or recover a penalty or to forfeit his property is totally different from the search and seizure of stolen goods, dutiable articles for unpaid duties, etc., which rightfully belong to the custody of the law. *Id.*

The 5th section of the Act of June 22, 1874 (18 Stats. at L., 186), which authorizes a court of the United States, on motion of the government attorney, to require the defendant or claimant, in revenue cases, to bring his private books, invoices, and papers into

court, or else that the allegations of the complaint be deemed confessed, held unconstitutional and void, as applied to suits for penalties, or for a forfeiture of the party's goods, as such action for forfeiture or penalty is a "criminal case," within the meaning of that part of the Fifth Amendment which declares that "no person shall be compelled in any criminal case, to be a witness against himself." *Id.*

Not applicable to seizures by State authority.—The arrest of a vessel engaged in taking oysters contrary to the statute of Maryland, held not contrary to the Constitution of the United States, as without "due process of law," as the Fifth Amendment restraining the issue of warrants, but on probable cause, etc., applies only to the United States and not the State authorities. *Smith v. Maryland*, 18 How., 71.

The Fifth and Sixth Amendments to the Constitution (relating to criminal prosecutions) were not designed as limits upon the State governments in reference to their own citizens, but are only restrictions upon Federal power. *Barron v. Baltimore*, 7 Pet., 243; *Thorington v. Montgomery*, 147 U. S., 490. See, *ante*, p. 292.

Taking for public use—*Sale of liquors may be forbidden.*—Forbidding the manufacture or sale of intoxicating liquors is not a taking of property for public use, nor without due process of law. *Mugler v. Kansas*, 123 U. S., 623.

In condemnation proceedings for taking lands for

public use under a State statute, a published notice of the proceedings, in compliance with the statute, is "due process of law." And where the commissions appointed to appraise have been sworn and acted, the question whether one of them was a freeholder can not be raised collaterally in an action of trespass for entering the land after condemnation. *Huling v. Kaw Valley Ry. Co.*, 130 U. S., 559. See, *post*, p. 374.

The provision of the Fifth Amendment, as to taking private property, is only a limitation of the power of the United States; it is not applicable to the legislation of the several States. *Barron v. Baltimore*, 7 Pet., 242.

The taking of a toll bridge, owned by a private corporation, may be accomplished for a public highway by eminent domain, and this taking, with compensation, does not impair the obligation of a contract. *West Riv. Bridge Co. v. Dix*, 6 How., 507; *Withers v. Buckley*, 20 How., 84.

The Confiscation Acts of August 6, 1861 (12 Stats. at L., 319), and July 17, 1862 (12 Stats. at L., 588), are an exercise of the war power and not in conflict with the restrictions of the Fifth and Sixth Amendments. *Miller v. United States*, 11 Wall., 268. But the purchase of the property of a loyal citizen of the late rebel confederacy, under such statutes, is void. *Knox v. Lee*, 12 Wall., 457.

Laws for the flowing of lands for mill-dams, or other like uses, are constitutional, if they provide for compen-

section; and land sold by the United States, though bordering on navigable streams, is within the protection of the constitutional provision. *Pumpelly v. Green Bay & M. Canal Co.*, 13 Wall., 166.

The right of eminent domain exists in the government of the United States, and may be exercised within the States so far as necessary in the enjoyment of powers conferred upon it by the Constitution. *Kohl v. United States*, 91 U. S., 367.

The general grant of legislative power in the Constitution of a State does not authorize the legislature, in the exercise either of the right of eminent domain, or the right of taxation, to take private property, without the owner's consent for any but a public object, and not as a mere donation to a private manufacturing corporation. *Cole v. La Grange*, 113 U. S., 1.

The provision in the Fifth Amendment of the Constitution, declaring that private property shall not be taken for public use without just compensation, is a limitation on the power of the United States, not upon the legislation of the several States. *Barron v. Baltimore*, 7 Pet., 243.

Compensation for property taken for public use.—In proceedings taken in behalf of the United States under Act of August 8, 1888 (25 Stat. at L., pp. 400, 411), to condemn the locks and dam of the Monongahela Navigation Company, the latter is entitled under the Fifth Amendment to compensation for its franchise, to take

tolls, as well as for the value of its tangible property. *Monongahela Nav. Co. v. United States*, 148 U. S., 312.

Twice in jeopardy.—Where a court has imposed fine *and* imprisonment, where the statute conferred power only to punish by fine *or* imprisonment, and the fine has been paid, the court can not, even during the same term, modify the sentence by imposing imprisonment instead of the former sentence. *Ex parte Lange*, 18 How., 163.

The same act or series of acts may constitute an offense equally against the United States and against a State, and subject the guilty party to punishment under the laws of each State. *Cross v. North Carolina*, 132 U. S., 132; *United States v. Marigold*, 9 How., 560, 569; *Fox v. Ohio*, 5 How., 410, 433; *Moore v. Illinois*, 14 How., 13, 19; *Ex parte Siebold*, 100 U. S., 371, 390. In the latter case it is held that Congress may pass a law to punish a violation of any State law in regard to the election of Representatives to Congress. See, *ante*, pp. 8, 301.

Where a jury in a criminal case is discharged during the trial because one of the jurymen had sworn on his *voir dire* that he had no acquaintance with the accused; and this fact had been disputed in a newspaper article, which the jury had read, a re-trial does not put the accused twice in jeopardy within the meaning of the Fifth Amendment. *United States v. Simmons*, 142 U. S., 148, citing *United States v. Perez*, 9 Wheat., 979.

ARTICLE VI.

RIGHTS OF ACCUSED PERSONS.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The courts of the United States have no common-law jurisdiction of offenses at common law against the United States. United States v. Coolidge, 1 Wheat., 415. Therefore, they can not take cognizance of a criminal prosecution for a libel against the President and Congress of the United States. United States v. Hudson, 7 Cranch, 32. There are no common-law offenses against the United States. United States v. Britton, 108 U. S., 206; United States v. Eaton, 144 U. S., 677. And the Federal courts can punish only such offenses as are defined and made punishable by the statutes of the United States. Id.

The statute of Pennsylvania enacted that "In any indictment for murder or manslaughter it shall not be

necessary to set forth the manner in which, or the means by which, the death of the deceased was caused; but it shall be sufficient in every indictment for murder to charge that the defendant did feloniously, wilfully and of malice aforethought, kill and murder the deceased." A defendant under sentence of death in the court, Oyer and Terminer of Pennsylvania, sued out a writ of error from the Supreme Court of the United States on the ground that the indictment did not sufficiently inform the accused of the nature of the accusation against him. *Held*, (1) That the court has no jurisdiction, as the Fifth and Sixth Amendments do not apply to the State governments; (2) that in the opinion of the court, it is doubtful whether such an indictment is sufficient. *Twitchell v. Commonwealth*, 7 Wall., 321. In the States which have authorized this form of indictment, it is held sufficient. See, *State v. Allen*, 85 Wis., 22, and cases cited.

The Supreme Court has not authority to issue a writ of *habeas corpus* to bring up the body of a person committed to jail for a contempt by a circuit court of the District of Columbia. *Ex parte Kearney*, 7 Wheat., 38. See, *post*, p. 387.

The deck of a private American vessel is considered for many purposes constructively as territory of the United States. Yet persons on board such vessels, whether officers, sailors, or passengers, can not invoke the protection of the provisions of the Constitution as

to indictment and trial by jury, until brought within the actual territorial limits of the United States. *Ross v. McIntyre*, 140 U. S., 453.

ARTICLE VII.

TRIAL BY JURY IN CASES AT LAW.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

"Suits at common law," within the meaning of the Seventh Amendment, include, not merely modes of proceeding known to the common law, but all suits, not of equity or admiralty jurisdiction, in which legal rights are settled and determined. *Parsons v. Bedford*, 3 Pet., 433.

The clause in the amendment, "No fact tried by a jury shall be otherwise re-examined, than according to the rules of the common law," is a prohibition to the courts of the United States to re-examine any facts tried by a jury in any other manner. The only modes known to the common law to re-examine such facts, are the granting of a new trial by the court where the issue was tried, or to which the record was returnable, or the award of a *venire facias de novo*, by an appellate court,

for some error of law which intervened in the proceedings. The Judiciary Act of 1789, c. 20, Sec. 17 (1 Stats. at L., 83), has given to all the courts of the United States "power to grant new trials in cases where there has been a trial by *jury*, for reasons for which new trials have usually been granted in the courts of law." *Parsons v. Bedford*, 3 Pet., 447.

An Act of the State of Maryland incorporating the Bank of Columbia, afterwards included in the District of Columbia, in 1793, gave to the corporation a summary process by execution, in the nature of an attachment against the debtors who have, by an express consent in writing, made the bonds, bills or notes drawn by them negotiable at that bank. This was held not repugnant to the Constitution of the United States or the State of Maryland. The Circuit Court of the District of Columbia was empowered by the Act of 1801 (2 Stats. at L., 102), to execute the provisions of this law. *Bank of Columbia v. Oakley*, 4 Wheat., 235.

When Louisiana was ceded to the United States she had and still retains a practice unlike the common law and more nearly like the civil law. There had been created a territorial district court by act of Congress before the admission of Louisiana into the Union. After the admission into the Union Congress passed an act (4 Stats. at L., p. 62), that the proceedings in civil cases in courts of the United States that now are or hereafter may be established in the State of Louisiana, shall be

conformable to the laws directing the mode of practice in the district courts of that State. This statute also provided for petit jurors in civil and criminal cases. It was held that it did not alter the appellate jurisdiction of the Supreme Court or give it power to re-examine the facts once tried by a jury in an action at law. *Parsons v. Bedford*, 3 Pet., 433.

A judgment of a State court though authorized by statute, whereby private property is taken for public use without compensation, is wanting in due process of law. *Chic., B. & Q. R'y Co. v. Chicago*, 166 U. S., 226. In this case the city laid a street across the grounds of the company, the jury fixed the damages at one dollar. The Supreme Court of the United States held the verdict conclusive, under the 7th Amendment, though the court might think the jury erred in passing on the facts as proved.

The provision that "no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law," applies to facts tried by a jury in a State court; and that part of the Act of March 3d, 1863, which provides for the removal of a judgment in a State court, and in which the cause was tried by a jury, to the Circuit Court of the United States for a re-trial on the facts and law, was contrary to this provision, and void. *The Justices v. Murray*, 9 Wall., 274.

The clause of the Seventh Amendment that "no fact

tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law," applies to cases coming to the Supreme Court of the United States from the highest courts of the States in which facts have been found by a jury. *Chicago, B. & Q. R'y v. Chicago*, 166 U. S., 226.

The Act of 1850, c. 51 (9 Stat. at L., 453, 458), admitting Utah as a territory, enacted "that the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable." A later act of Congress (18 Stats. at L., 27), confirmed the statutes of various territories "so far as they authorized a uniform course of proceeding in all cases whether legal or equitable, provided, that no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law." While such was the state of the law a territorial statute providing that a verdict in civil cases might be rendered by nine or more members of the jury, was held invalid, as contravening the Seventh Amendment. *Am. Pub. Co. v. Fisher*, 166 U. S., 464. This implies that the substance as well as the form of a jury trial should be preserved. *Walker v. South. Pac. R. R. Co.*, 165 U. S., 593.

ARTICLE VIII.

EXCESSIVE BAIL AND CRUEL PUNISHMENTS PROHIBITED.

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

What are excessive fines, cruel or unusual punishments.—The provision that "excessive fines shall not be imposed nor cruel and unusual punishments inflicted" applies to National not State legislation. *Pervear v. Mass.*, 5 Wall., 475.

A fine of \$50 and imprisonment at hard labor for three months as punishment for selling liquor without license, would not be deemed an excessive fine, nor a cruel or unusual punishment. *Pervear v. Mass.*, 5 Wall., 475.

The statute of New York which provides for capital punishment by electricity is not forbidden by this section. *In re Kemmler*, 136 U. S., 436.

The statute of Utah, while a territory, provided for punishment of capital offenses by shooting, hanging or beheading, giving option to the convict as to the mode he would select. *Held*, he could be sentenced under this act, and the court can direct the mode where the prisoner does not make the selection. *Wilkerson v. Utah*, 99 U. S., 130. This statute of March 6, 1852, held not repealed by later act. *Id.*

The adoption of the 14th Amendment does not make

all the provisions of the first ten amendments operative in the State courts. *Maxwell v. Dow*, 176 U. S., 581.

The first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply embodied certain guaranties and immunities, which we had inherited from our English ancestors; and which had from time immemorial, been subject to certain well recognized exceptions. It was not intended in adopting these amendments to disregard the exceptions, which have always been recognized as if formally expressed. The power to arrest deserting seamen in the merchant service and deliver them on board their vessel, is not a part of the "judicial power," and Congress can confer it on justices of the peace, without violation of the ten amendments, or Sections 1 and 2 of Article III, conferring judicial power, nor the 13th Amendment. *Robertson v. Baldwin*, 165 U. S., 275.

ARTICLE IX.

ENUMERATED POWERS NO DENIAL OF OTHERS RETAINED
BY PEOPLE.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The State of Pennsylvania having liens upon the lands of its debtors by judgments and other proceedings passed a special act subjecting the lands to sale on pro-

cess to be issued by the Governor, to satisfy the debts, there being no other mode under the laws then existing to satisfy the debts. It was contended that this law violated the 9th Amendment, as well as the 6th and 7th, but the answer of the court was that those amendments did not apply to the States. *Livingston's Lessee v. Moore*, 7 Pet., 469.

"The most cursory glance at these articles discloses a unity of purpose, when taken in connection with the history of the times, which can not fail to have an important bearing on any question of doubt concerning their true meaning. Nor, can such doubts, when any reasonably exist, be safely and rationally solved without a reference to that history; for in it is found the occasion and necessity for recurring again to the great source of power in this country, the people of the States, for additional guaranties of human rights; additional powers to the Federal government; additional restraints upon those of the States." *Slaughter-House Cases*, 16 Wall., 36, 37.

ARTICLE X.

RESERVED POWERS.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The general government and the States, although both exist within the same territorial limits, are sepa-

rate and distinct sovereignties acting separately and independently of each other within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the 10th Amendment, "reserved," are as independent of the general government as that government within its sphere is independent of the States. And Congress can not under the Constitution impose a tax upon the salary of an officer of the State. *Collector v. Day*, 11 Wall., 113. See, *Ableman v. Booth*, 21 How., 506.

This provision applied in sustaining a municipal ordinance of New Orleans, which authorized the collection of wharfage. *Ouichita Packet Co. v. Aiken*, 121 U. S., 444. See, *ante*, p. 71. The ordinance was found not contrary to the Constitution or any law of the United States.

The Supreme Court in holding the act of the State of New York, which required all ships or vessels entering the port of New York to pay a certain tax per ton, void as a duty on tonnage, say that it is prohibited to the States. *Inman Steamship Co. v. Tinker*, 94 U. S., 238.

No mode is provided by the Constitution and laws of the United States by which a person, unlawfully abducted from one State to another, and held in the latter State upon process of law for an offense against the State, can be restored to the State from which he was ab-

ducted; and such person can not be discharged on a writ of *habeas corpus* from a Federal court. *Mahon v. Justice*, 127 U. S., 700.

The statutes of the United States are as much the law of the land in any State as are those of the State; and although *exclusive* jurisdiction for their enforcement may be given to the Federal courts, yet where it is not given, either expressly or by necessary implication, the State courts having competent authority, may be resorted to. *Clafin v. Houseman*, 93 U. S., 130. An assignee in bankruptcy may sue in a State court, to recover the assets of the bankrupt, no *exclusive* jurisdiction having been conferred on the courts of the United States. *Id.*

This clause finds illustration in the case of State law punishing the offense of passing counterfeit coin, which is also a violation of the statutes of the United States. It was held not prohibited to the States to so punish. *Fox v. Ohio*, 5 How., 410, 432.

The statutes of the State of Maryland protecting the oyster fisheries of the Chesapeake Bay, were held not to contravene the Constitution or any law of the United States. *Smith v. Maryland*, 17 How., 71.

A license from the Federal government under the internal revenue acts, does not work a prohibition to the State to pass laws regulating or forbidding the sale of intoxicating liquors. *Pervear v. Commonwealth*, 5 Wall., 71; *License Tax Cases*, 5 Wall., 462.

The statutes of Indiana which require telegraph com-

panies to deliver despatches by messenger to persons to whom addressed or their agents, provided they reside within one mile of the telegraph station, or within the city or town where the station is, were held void, as in conflict with the interstate commercial power granted to Congress, in so far as the statutes attempt to regulate the delivery of despatches sent from other States. *W. U. Tel. Co. v. Pendleton*, 122 U. S., 347.

The powers of the general government are made up of concessions from the several States—whatever is not expressly given the latter expressly reserve. The judicial power of the United States is a constituent part of these concessions—that power is to be exercised by the courts organized for the purpose, and brought into existence by an effort of the legislative power of the Union. All the other courts (except the Supreme Court) of the United States possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general government will authorize them to confer. *United States v. Hudson*, 7 Cranch, 32.

ARTICLE XI.

JUDICIAL POWER LIMITED AS TO SUITS AGAINST STATES.

“The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.”

The adoption of the 11th Amendment by the constitutional number of States operated to deprive the Supreme Court of jurisdiction over suits against a State by citizens of another State; and suits pending at the time of its adoption could be no further prosecuted. *Hollingsworth v. Virginia*, 3 Dall., 378. Nor could new suits be instituted. *Hans v. Louisiana*, 134 U. S., 11.

The 11th Amendment does not operate to prevent counties in a State from being sued in the Federal courts. This amendment limits the jurisdiction only as to suits against a State. *Lincoln County v. Luning*, 133 U. S., 529. A State statute which attempts to exempt counties from liability except in the courts of the county can not defeat the jurisdiction given by the Constitution to the Federal courts. *Id.*

A suit in equity against a board of canal commissioners, brought by one who has purchased State lands, to restrain alleged violations of the purchaser's right under his contract of purchase, is not a suit against the State within the meaning of the 11th Amendment. *Pennoyer v. Connaughty*, 140 U. S., 1. See, *ante*, p. 226.

A circuit court of the United States, in a proper case in equity, may enjoin a State officer from executing a State law in conflict with the Constitution or a statute of the United States, when such execution will violate the rights of the complainant. Where the State is con-

cerned it should be made a party, if it can be done. That it can not be done is a sufficient reason for not doing it and the case may proceed to a decree without the State being a party. In deciding who are parties to the suit the court need not look beyond the record. Making a State officer a party is not making the State a party, although her law may prompt his action and she may stand behind him as the real party in interest. *Osborn v. Bank*, 9 Wheat., 846; *Davis v. Gray*, 16 Wall., 203.

Under this amendment a citizen of a State can not sue his *own* State in the Federal courts. *Hans v. Louisiana*, 134 U. S., 1; *North Carolina v. Temple*, 134 U. S., 22.

A bank or other corporation, wherein a State is one of the corporators or the sole corporator, may be sued by a citizen of another State. The State puts off its sovereignty when it becomes a stockholder. *Curran v. Bank of Arkansas*, 15 How., 304.

Suits against State boards or officers.—In *Osborne v. Bank of the United States*, 9 Wheat., 738, it was held as above indicated, viz.: that where the State was not a party to the record, the action could be maintained. But in later cases this doctrine has been overruled. In *Louisiana*, 107 U. S., 711, it was held that a *mandamus* would not lie to compel a board which held in trust certain funds for payment to the creditors of the State to pay them contrary to a direction by the State legislature, as the funds were State funds and the suit was against

the State though not a party of record. So, *In re Ayres*, 123 U. S., 443, it was held, where the State of Virginia had directed its Attorney General to sue certain tax payers, where they had tendered tax-receivable coupons, a creditor filed a bill in the Federal court and obtained an injunction enjoining the Attorney General of the State from prosecuting such suits. The Attorney General disregarded the injunction, and the judge of the United States court out of which the injunction was issued, fined and imprisoned the Attorney General for contempt. The Supreme Court discharged him on the ground that the suit for such injunction was really against the State and could not be maintained in the Federal court. This was followed in *McGahey v. Virginia*, 135 U. S., 562, and *Pennoyer v. Virginia*, 140 U. S., 1.

So, further, it was held that when a suit is brought in a court of the United States to enforce performance of a contract made by the State and the validity of the contract is the question in controversy, and the remedy sought is by the State, the officers as nominal defendants having no personal interest in the suit, but defending only as representatives of the State, the State is the real party and the suit is prohibited by the 11th Amendment. *Hagood v. Southern*, 117 U. S., 52.

A Federal court is without jurisdiction of a suit by a private person against the executive officers of a State to test the constitutionality of a statute or enjoin its en-

forcement, where the defendants are by the statute charged with no duty and have done and attempted to do nothing to the harm of the plaintiff. Such action is in effect against the State. *Fitts v. McGhee*, 172 U. S., 516.

But where a State by its officer seizes the property of a citizen, in violation of his rights under the Constitution, the officer can be sued, and can not plead that the act is that of the State, because the State can not authorize an unconstitutional act. The action is against the officer as a wrong-doer, and not against the State. *Coupon Cases*, 114 U. S., 269; *Cunningham v. R. R. Co.*, 109 U. S., 453; *Tomlinson v. Branch*, 15 Wall., 460; *Board of Liquidation v. McComb*, 92 U. S., 531.

Suits in the Supreme Court by one State against another.—The State of Louisiana filed a bill against Texas, her Governor and health officer, alleging that the latter State had granted its Governor and health officer extensive powers to maintain quarantine over infectious diseases, which power was purposely exercised to build up commerce in Texan cities to the detriment of New Orleans. A decree was prayed for that neither the State of Texas nor her Governor nor health officer have the right under an exercise of police or quarantine powers to declare and enforce an embargo against interstate commerce nor to discriminate against Louisi-

ana in such regulations. The bill, on demurrer, was dismissed for want of jurisdiction, because—

(1) In order to maintain jurisdiction it must appear that the controversy to be determined was directly between State and State and not in vindication of the grievances of particular individuals; and that in this case the State presented herself as *parens patriae*, guardian or representative of her citizens; and (2) that the bill failed to show that the State of Texas had so authorized or confirmed the act of her health officer as to make it her own; (3) that the court was unable to hold that the bill presented a case in controversy between a State and citizens of another State, or, (4) that it could be maintained as a suit against the health officer alone on the theory that he had acted in excess of or violation of a valid law of the State. *Louisiana v. Texas*, 176 U. S., 1. The previous cases are cited and explained in this case. See, *ante*, p. 207.

ARTICLE XII.

TWELFTH AMENDMENT.

Article XII of the amendments is given in connection with the part of the original Constitution amended by it.

ARTICLE XIII.

SLAVERY PROHIBITED.

Section 1. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. "Congress shall have power to enforce this article by appropriate legislation."

Decisions explanatory of the Thirteenth Amendment.

The Thirteenth Amendment relates only to slavery and the involuntary servitude which it abolishes; and thus establishes universal freedom in the United States; and Congress may lawfully pass laws directly enforcing its provisions; but this legislative power extends only to slavery and its incidents; and the denial of equal accommodations in inns, public conveyances, and places of public amusement imposes no badge of slavery or involuntary servitude upon the party, but at most infringes rights which by the Fourteenth Amendment are protected from State aggression. *Civil Rights Cases*, 109 U. S., 3.

"One great purpose of these (Thirteenth and Fourteenth) Amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of

civil rights with all other persons within the jurisdiction, to take away all possibility of oppression by law because of race or color. They were intended to be, what they really are, limitations of the power of the States and enlargements of the power of Congress. They are to some extent declarations of rights, and though in form prohibitions, they imply immunities, such as may be protected by congressional legislation." *Ex parte Virginia*, 100 U. S., 339, 344.

An examination of the history of the causes which led to the adoption of these amendments demonstrates that the main purpose of all the last three amendments was the freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white man who had formerly held them in slavery. In construing them it is necessary to have in view the main purposes, though the letter and spirit of those articles must apply to all cases coming within their purview, whether the party concerned be of African descent or not. The Thirteenth Amendment, primarily intended to abolish slavery, equally forbids Mexican peonage or the Chinese Cooley trade, when they amount to slavery or involuntary servitude; and the use of the word "servitude" is intended to prohibit all forms of involuntary servitude of every class of men. *Slaughter-House Cases*, 16 Wall., 36.

A person in Arkansas, one of the late slave-holding States, for a valuable consideration, passed in March,

1861, before the Rebellion had broken out, sold a negro slave which he then had, in the bill of sale warranting the said negro to be a slave for life, and also warranting the title to be clear and perfect. The Thirteenth Amendment subsequently made operated to give this slave his freedom. In an action brought, after the amendment, upon the promissory note given for the slave, the defendant pleaded the warranty that the negro was a slave for life. *Held*, by the Supreme Court:—

1. That slavery having been lawful in Arkansas when the contract was made, the contract was legal.

2. That the right to sue upon it was not taken away by the Thirteenth Amendment, as the destruction of vested rights can not be presumed to result by implication.

3. That the warranty of the negro as a slave for life was not a warranty of continuity of title against the acts of sovereign power. *Osborn v. Livingston*, 13 Wall., 654.

The Act of Congress of March 1st, 1865 (18th Stats. at L., part 3,336), which enacts that no citizen possessing all the other qualifications which are or may be prescribed by law, shall be disqualified from service as grand or petit juror in any court of the United States or of any State, on account of race, color or previous condition of servitude; and making it a misdemeanor to exclude or fail to summon them for that cause, was held constitutional. *Ex parte Virginia*, 100 U. S., 339.

This case arose as follows: Judge Coles was indicted in one of the district courts of the United States for Virginia, charged with excluding jurors because they were colored men and ex-slaves. The matter was brought before the Supreme Court, to test the validity of the Act of Congress, which the judge was charged with violating. *Id.*

Exclusion of colored persons from grand jury.—Finding an indictment against a negro in a State court, by a grand jury from which colored men are excluded solely because of their race or color, denies him the equal protection of the laws, whether done by the action of the legislature, through the courts, or by the executive or administrative officers of the State. *Carter v. Texas*, 177 U. S., 442; *Strauder v. West Virginia*, 100 U. S., 303; *Neal v. Delaware*, 103 U. S., 370, 397; *Gibson v. Miss.*, 162 U. S., 565; *Virginia v. Rives*, 100 U. S., 315; *Ex parte Virginia*, 100 U. S., 339.

ARTICLE XIV.

CITIZENSHIP AND CIVIL RIGHTS.

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive

any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. "No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. "The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for service in suppressing insurrection or rebellion, shall not be questioned. But neither the United States, nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Citizenship—Indians when not citizens.—An Indian, born a member of one of the Indian tribes within the United States, which still exists and is recognized by the government as a tribe, and who has voluntarily separated himself from his tribe, and taken up his residence among the white citizens of a State, but who has not been naturalized or taxed or recognized as a citizen, either by the United States or by the State, is not a citizen of the United States, within the meaning of the 1st section of the Fourteenth Amendment. *Elk v. Wilkins*, 112 U. S., 94.

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside." They may be citizens of the United States and not be citizens of any State. *Slaughter-House Cases*, 16

Wall., 36, 74. The same person may be at the same time a citizen of the United States and a citizen of a State; but his rights of citizenship under one of these governments will be different from those he has under the other. *United States v. Cruikshank*, 92 U. S., 542.

Does not confer female suffrage.—A provision in a State Constitution which confers the right of voting to "male citizens of the United States," does not violate the Federal Constitution. *Minor v. Happersett*, 21 Wall., 162. The amendment does not add to the privileges and immunities of citizens. It simply furnished an additional guaranty for the protection of such as they already had. At the time of the adoption of this amendment suffrage was not co-extensive with citizenship, nor were the terms co-extensive at the time of the adoption of the Constitution. *Id.*, 92 U. S., 542:

NOTE.—Most of the decisions on the question of citizenship arise under the *naturalization laws*, and no attempt is here made to collate them.

DECISIONS RELATING TO THE 14TH AMENDMENT.

I. *Operative against States, not individuals.*

The 14th Amendment is prohibitory upon the States only, and the legislation authorized to be adopted by Congress is not *direct* legislation on the matters respecting which the States are prohibited from making or enforcing certain laws, or doing certain acts, but is *corrective* legislation, such as may be necessary or proper for counteracting or redressing such laws.

The 1st and 2d sections of the Civil Rights Act, passed March 1st, 1875 (18 Stats. at L., 335), which undertakes to declare all persons within the jurisdiction of the United States entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theaters and other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of previous condition or servitude, and punish the denial of such enjoyment by fine or imprisonment, held unconstitutional; as such power to deal with individuals directly for refusing or denying such privileges and enjoyments was not conferred on Congress by the amendment. The 14th Amendment protects the civil rights of the people of the class affected from *State aggression*. Civil Rights Cases, 109 U. S., 3.

II. *Discrimination by State laws against colored citizens.*

The 14th Amendment was one of a series of constitutional provisions having a common purpose; namely, to secure to a recently emancipated race all of the civil rights the superior race enjoyed, and to give it the protection of the general government in the enjoyment of such rights, whenever they should be denied by the States.

A statute of West Virginia, which, in effect, singles

out and denies to colored citizens the right of sitting as jurors, because of their color, though qualified in all other respects, is a ban upon them and a discrimination against them, which is forbidden by the amendment. The Revised Statutes of the United States, Sec. 641, which provides for the removal of any civil suit or criminal prosecution from the State to the Federal courts when the party against whom the cause is pending, is denied or can not enforce any right secured to him by the Civil Rights Act as a citizen of the United States, and prescribes the method for such removal, is a valid act. *Strauder v. West Virginia*, 100 U. S., 303; *Virginia v. Rives*, 100 U. S., 313.

The provisions of the 14th Amendment have exclusive reference to the State action. It is the State which is prohibited from denying. *Id.*

When in a judicial proceeding a person is denied any civil right secured by the within amendments, after it is too late to remove the same to the Federal courts for trial, the final judgment of the highest court may be reviewed by the Supreme Court. *Id.*

Congress may enforce the prohibition of this section, whenever they are disregarded by either the legislature, the executive, or judicial departments of a State. The mode of enforcement is left to the discretion of Congress. It may enforce it by providing for the removal of the case into the Federal courts from the State court

where the right is denied. *Virginia v. Rives*, 100 U. S., 313.

The defendant accused of crime and prosecuted in a State court, himself a colored man, was about to be tried. He asked that one-third of the panel of jurors be men of his own race. The denial of this motion did not deny him any right secured by these amendments. It appeared that the jurors had been called by the venire, without any discrimination, from both races. And this was all that he was entitled to. He could not claim that a part of the jury which tried him should be colored men. *Virginia v. Rives*, 100 U. S., 313.

Where a cause has been removed from a State into a Federal court on the erroneous ground that civil rights were denied, the Supreme Court granted a mandamus to the judge of the Federal court, on examining the case and finding that no civil right was infringed, commanding him to remand the cause. *Id.*

When a State, by action of its legislature, courts, or executive or administrative officers debar persons of the African race from serving as grand jurors in the criminal prosecution of a person of that race, such person so prosecuted is denied the equal protection of the laws. When denied the right of challenge to a grand juror thus selected, the objection may be taken by plea in abatement or motion to quash the indictment, before pleading in bar. The question whether his constitutional right was pleaded and brought to the notice of the

State court is itself a Federal question. *Carter v. Texas*, 177 U. S., 442.

Education of colored children.—A board of education maintained a high school for white children; but temporarily suspended a similar school for colored children for economic reasons. It was prayed that the board be enjoined from maintaining a school for white children. It appeared that no hostility to the colored race actuated the board; and the action was not deemed a denial of the equal protection of the laws or of any privilege belonging to the colored people complaining within the meaning of the 14th Amendment. *Cumming v. Richmond Co. Board of Education*, 175 U. S., 528.

III. *Instances where the statutes of States have been held as void because denying the equal protection of the laws.*

Police regulation as to boundaries.—A municipal ordinance forbade persons from carrying on the laundry business within corporate limits without having first obtained the consent of the board of supervisors, thus making an arbitrary and unjust discrimination founded on difference of race, between persons otherwise in similar circumstances. This ordinance was aimed at the Chinese in San Francisco. It violates the guaranties of the 14th Amendment, which extends to all persons the equal protection of the laws. *Yick Wo v. Hopkins*, 118 U. S., 356.

Discrimination against non-resident creditors.—Un-

secured non-resident creditors, citizens of other States, of a foreign corporation doing business in a State, are entitled to share in the distribution of its assets on the same footing with creditors residing in the State. An act of the State of Tennessee giving priority to creditors within the State over non-resident creditors by simple contract debt, and over judgment or mortgage, given after the local debt was incurred, was held violative of Article IV and of the 14th Amendment. *Sully v. Am. Nat. Bank*, 178 U. S., 289, following *Blake v. McClung*, 172 U. S., 239, 176 U. S., 59.

IV. *Statutes limiting the rates carriers may charge, held void as depriving them of a reasonable profit.*

The sale of tickets—Michigan act void.—The statute of Michigan requiring the railroad companies to sell 1000-mile tickets at less than the specified rates, and to be good for two years, is taking the property of the corporation without due process of law. *Lake Shore, etc., R'y Co. v. Smith*, 173 U. S., 684.

Can not reduce rates to deprive of a profit.—While a State can, where unhampered by contract, fix maximum rates or charges for the railroad companies, such power is subject to the condition that the rates must be such as will admit of the carrier earning a compensation just to it and to the public. What is a reasonable compensation is a judicial question. *R'y Co. v. Wellman*, 143 U. S., 339; *Reagan v. Trust Co.*, 154 U. S., 362, 399;

R'y Co. v. Gill, 156 U. S., 649; Smyth v. Ames, 169 U. S., 466, 523.

The Nebraska law of April 12th, 1893, fixing maximum rates of railroad freights on local business is void. It is held to deprive them of a reasonable profit on their business, which is depriving them of their property without due process of law. *Smyth v. Ames*, 169 U. S., 466, 523. This case reasons out the subject at great length.

A railroad company is not protected by the 14th Amendment in charging rates for the purpose of realizing profit upon fictitious capital. It is entitled only to a fair return upon the value of what is employed for the public convenience. *Id.* The Nebraska statute, regulating and reducing the rates of transportation of a company below a just and reasonable rate, was held void. The reasonableness of the rates is the subject of judicial inquiry. *Id.*, S. C., 171 U. S., 361.

A State can not so reduce local freights as to throw an undue burden on interstate business to make up losses caused by such unreasonable local rates. *Id.* See, *ante*, pp. 55, 352.

V. Instances where the statutes of a State affecting rates charged by carriers and police regulations concerning them have been upheld.

1. *States may classify railroads.*—A State statute which classifies the railroad corporations by the length of their lines fixing, in each class, a different limit to the

passenger rates, is not a denial of the equal protection of the laws. *Dow v. Beidelman*, 125 U. S., 680.

2. *States may fix maximum rates for domestic transportation.*—The statute of Arkansas of April 4th, 1887, fixed at three cents a mile the maximum fare that any railroad corporation may take for carrying passengers within the State. This was not a taking of property without due process of law. In this case, the course of decision by the court is fully reviewed. *Dow v. Beidelman*, 125 U. S., 680.

3. *State may compel companies to pay expenses of railroad commission.*—The provisions of the statute of South Carolina, that the expenses of a railroad commission, created by State law and invested with a general supervision over the railroads in the State, should be borne entirely by the railroad corporations, held not to deprive the corporations of the equal protection of the laws or other provisions of the 14th Amendment. *Charlotte, etc., Co. v. Gibbes*, 142 U. S., 386. The reasons assigned for this decision are that it is not a tax of a general nature imposed upon them; but that their business is affected with a public interest; the regulation by a commission is within the power of the State and the exercise of the duties of the commission beneficial to the public and also to the railroad companies. *Id.*

4. *Express companies, how they may be taxed.*—A statute of Missouri which imposes on express companies a tax on "the receipts of their business done in the State"

does not deprive of the equal protection of the laws, since that State has the right to tax different kinds of property in different ways; and express companies, having little or no tangible property of their own, constitute a separate class from companies owning their own means of transportation. *Pac. Ex. Co. v. Seibert*, 142 U. S., 339. See, *ante*, pp. 51, 56.

States may repeal laws exempting from taxation.—A charter immunity from taxation for a designated period held not a vested right, nor within the clause of a State statute forbidding the amendment or repeal of a charter which would impair such rights. *Citizens Saving Bk. v. City of Owensboro*, 173 U. S., 636. See, *ante*, p. 151.

State may declare lands forfeit for failure to report for taxation.—A law of West Virginia by which taxable lands are forfeited to the State for neglect by the owners for five consecutive years to enter them for taxation, in cases where the owner so owned 1,000 acres or more, but the law exempted from such forfeiture owners of less than that quantity, held not for that reason to deny equal protection, nor take without due process of law. *King v. Mullins*, 171 U. S., 404.

State can not grant away the right to limit rates.—The right of a State to reasonably limit the amount of charges by a railroad company for the transportation of persons and property within its jurisdiction can not be granted away by the legislature but by words of positive enactment. And where the charter contains the clause

giving the right from time to time to fix, regulate and receive the tolls and charges by them to be received for transportation, these words do not grant away the right in the State to regulate the same and to act upon the reasonableness of the rates thus charged. Railroad Commission Cases, 116 U. S., 307.

VI. The police power of States not affected by the 14th Amendment.

Police power of the State not impaired.—The 14th Amendment does not impair the police power of a State. A municipal ordinance, passed under legislative authority to the municipality, prohibiting washing and ironing in public laundries and washhouses from ten o'clock at night to six in the morning, is a purely police regulation, within the competency of a municipality possessed of ordinary powers. *Barbier v. Connolly*, 113 U. S., 27; *Soon Hing v. Crowley*, 113 U. S., 703.

The 14th Amendment does not limit the subjects in relation to which the police power of the State may be exercised for the protection of its citizens. *Barbier v. Connolly*, 113 U. S., 27; *Soon Hing v. Crowley*, 113 U. S., 703; *Mo. Pac. R'y v. Humes*, 115 U. S., 512; *Minn. R'y Co. v. Beckwith*, 129 U. S., 26.

The State may limit or restrain the sale of intoxicating liquors.—A State may prohibit or restrain the manufacture or sale of intoxicating liquors within its limits, and inflict penalties therefor, and provide for the abatement as a nuisance of all property used for such for-

bidden purposes; and such legislation does not deprive of property without due process of law. *Kidd v. Pearson*, 128 U. S., 1. See, *ante*, p. 67.

Police regulations the State may prescribe without contravening the 14th Amendment: 1. May change rate of interest on judgments.—A State statute may change the rate of interest on a judgment previously rendered. This is not depriving of property without due process of law. *Morley v. Lake Shore, etc., R'y Co.*, 146 U. S., 162. It is ruled that the contract did not provide that the interest on any judgment should be at any particular rate. *Id.*

2. *May require practitioners to pay license tax.*—The statute of West Virginia which requires every practitioner of medicine in the State to obtain a certificate from the State board of health that he is a graduate of a reputable medical college in the school of medicine to which he belongs, or that he has practiced medicine in the State for ten years or that he is found upon examination to be qualified to practice medicine in all its departments and which subjects a person so practicing without such certificate to prosecution and punishment for a misdemeanor, does not violate the Fourteenth Amendment, even when applied to one who had practiced medicine for five years before the passage of the act. *Dent v. West Virginia*, 129 U. S., 114.

3. *The location of markets.*—An ordinance declaring that no public market in New Orleans shall be kept

within six squares of any other public market, under penalty, does not violate the Fourteenth Amendment to the Constitution. *Natal v. Louisiana*, 139 U. S., 621. See *Slaughter-House Cases*, 16 Wall., 36.

4. *May make regulation to protect highways, etc.*—An ordinance of a city prohibiting the moving of any building on or across the streets without permission of the mayor of the city or president of the council, does not violate the Fourteenth Amendment. *Wilson v. Eureka City*, 173 U. S., 32.

The statute of Utah which makes any person who drives cattle on a hillside highway liable for damages by such animals to the highway, does not deny to such persons the equal protection of the laws. The damages in this case were caused by rolling rocks in the highway and destroying the banks. *Jones v. Brim*, 165 U. S., 180.

5. *May locate harbor lines.*—The location of harbor lines on navigable waters held not a depriving of property without due process of law, though they included a wharf long established, where the Constitution of the State recognized a vested right therein; as the same right remained in the wharf-owner after as before the establishment of the harbor line. *Yesler v. Harbor Line Com'rs*, 146 U. S., 646.

6. *May require cars to be heated otherwise than by stoves.*—A statute of New York which forbids the heating of passenger cars by stoves, on railroads over 50

miles in length, does not violate the Fourteenth Amendment. New York, etc., *R'y Co. v. People of New York*, 165 U. S., 628.

7. *May declare liability of railroad companies for failure to fence tracks.*—A statute of Minnesota (Gen. Laws, 1877) gave to land owners damages for the expense and inconvenience of watching cattle, to keep them from escaping upon the railroad tracks running through their lands, which the company had failed to fence. Such statute is within the police power of the State and not subject to the inhibition of the Fourteenth Amendment, as it does not deprive of the equal protection of the laws. *Minneapolis, etc., R. R. Co. v. Emmons*, 149 U. S., 364; *Same v. Nelson*, 149 U. S., 368. So, the allowance of damages for the diminution in value of the farms resulting from the failure to fence its tracks. *Id.*

8. *May regulate licensing of locomotive engineers.*—A State statute requiring locomotive engineers to be examined as to their capacity to distinguish colors and discriminate between color signals, and require railroad companies to pay a fee for such examination, does not deprive of property without due process of law, nor affect interstate commerce. *Nashville, etc., R'y Co. v. Alabama*, 128 U. S., 96.

9. *May regulate rule as to damages for injuries to employes.*—The statute of Kansas which provides that, "Every railroad company organized or doing business

in this State shall be liable for all damages done by any employe of such company in consequence of any negligence of its agents, or by the mismanagement of its engineers, or other employes, to any person sustaining such damage," does not deprive of property without due process of law, nor deny equal protection of the laws. *Missouri R'y Co. v. Mackey*, 127 U. S., 206. The reason for this ruling is that the hazardous character of the business of operating a railroad calls for special legislation, having for its object the protection of their employes as well as the public. The business of other corporations is not subject to similar dangers to employes. *Id.*; *Minneapolis, etc., Co. v. Herrick*, 127 U. S., 210.

Statutes of similar character, making railroad companies peculiarly liable, have been upheld in *Chicago, etc., Ry. Co. v. Pontius*, 157 U. S., 209; *Orient Ins. Co. v. Daggs*, 172 U. S., 557.

10. *May fix rule of damages for stock killed by negligence of railroad.*—The statute of Iowa (Sec. 1289), which authorizes the receiving of "double the value of stock killed or damages caused thereto" by railroads derelict in maintaining fences on their tracks is not depriving of property without due process of law or denying of equal protection. *Minneapolis R'y Co. v. Beckwith*, 129 U. S., 26.

11. *May restrain illegal fishing and declaring apparatus so used nuisances.*—Laws of a State declaring nets, pounds and other devices for violating the laws

against fishing or killing game out of season, a nuisance, are not in violation of the 14th Amendment, as depriving of property without due process of law. *Lawton v. Steele*, 152 U. S., 132.

12. *May regulate payment of wages to discharged employes.*—An Arkansas statute, which requires any railroad company discharging an employe, to immediately pay any unpaid wages earned at the time of discharge, is not contrary to the 14th Amendment. *St. Louis, etc., R. Co. v. Paul*, 173 U. S., 404.

13. *May regulate insurance contracts to be made in the future.*—A valued policy statute applying only to future contracts which raises a conclusive presumption of fact as to value, does not deprive an insurance company of property without due process of law, as the parties are free to fix the value and the statute merely estops them after the contract is made. *Orient Ins. Co. v. Daggs*, 172 U. S., 557.

14. *May regulate the sale of oleomargarine and like products.*—The 14th Amendment to the Constitution was not designed to interfere with the exercise of the police power of the State for the protection of health, the prevention of fraud, and the preservation of public morals. The prohibition of the manufacture of oleaginous substances, such as oleomargarine or butterine, or of products in imitation of butter, is a lawful exercise of the police power. The statute of Pennsylvania "for the protection of the public health and to prevent adul-

teration of dairy products and fraud in their sale," held valid; and that it neither denies equal protection, deprives of property without due process of law, or without compensation. *Powell v. Pennsylvania*, 127 U. S., 678.

15. *May make water rents a charge upon lands, with priority of lien, etc.*—An act making water rents a charge upon lands in a municipality, with a lien having priority to all liens by mortgage, does no violation to the 14th Amendment, whether the water was introduced upon the premises before or after the giving of the mortgages. It is not depriving without due process of law. *Provident Inst. v. Jersey City*, 113 U. S., 506.

16. *How far may exclude foreign corporations from doing business in the States.*—The only limitation upon the power of the State to exclude foreign corporations from doing business within its limits or hiring officers for that purpose or to exact conditions for allowing the corporations to do business or hire officers there, arises where the corporation is in the employ of the Federal government, or where its business is strictly commerce, foreign or interstate. *Pembina Mining Co. v. Pennsylvania*, 125 U. S., 181. This was a Colorado corporation, and by the laws of Pennsylvania was required to pay a license fee to enable it to have an office in that State. See *ante*, pp. 190, 260. Corporations are persons within the meaning of the 14th Amendment. *Santa Clara Co. v. So. Pac. R. R. Co.*, 118 U. S., 394; *Pembina Mining Co. v. Pennsylvania*, 125 U. S., 181.

But a foreign corporation can not claim that it is denied the equal protection of the laws by being required to pay a license tax to do business in the State. It must comply with the conditions imposed for the privilege of doing business in the State. *Phila. Fire Ass. v. New York*, 119 U. S., 110.

17. *May fix hours of labor in mines.*—The statute of Utah forbidding the employment of working men for more than eight hours a day in mines and the smelting, reduction, etc., of ores, is within the police power of the State, not an interference with the right of contract, nor violation of the 14th Amendment. *Holden v. Hardy*, 169 U. S., 366.

18. *The right to demand reimbursement from a municipal corporation for damages caused by a mob* is a statutory right, and not one founded on contract. The legislature may repeal the law; and when a judgment has been obtained therefor, the State may forbid the levying of taxes to pay such judgments, without depriving the owner of his property without due process of law, within the meaning of the 14th Amendment. *Louisiana v. Mayor of New Orleans*, 109 U. S., 285.

19. *The Chinese Deportation Act of May 6th, 1892*, which puts the burden of proof upon a Chinese laborer arrested for having no certificate, as well as the requirement of proof by one credible white man that he was a resident of the United States at the time of the passage

of the Act, is not unconstitutional. *Fong Yue Ting v. United States*, 149 U. S., 698.

20. *Warehouses and elevators, subject to State restrictions to charges.*—The States under their police power may fix the reasonable rates to be charged for receiving in elevators and storing grain; and such restrictions do not deprive the owners of the warehouses or elevators of equal protection or due process of law. *Munn v. Illinois*, 94 U. S., 113; *Budd v. New York*, 143 U. S., 517; *Brass v. Stoesser*, 153 U. S., 391.

21. *Irrigation of lands a public purpose, statutes for, valid.*—The statutes of California to provide for the organization and government of irrigation districts, the acquisition and distribution of water, being held valid by the Supreme Court of the State, are so regarded. *Fallbrook Irrigation Dist. v. Bradley*, 164 U. S., 112. The method of taking property for such use is due process of law. *Id.*

Miscellaneous police regulations held valid.—The ordinance of the city of Boston which provides that “no person shall, in or upon any of the public grounds, make any public address,” etc., “except in accordance with a permit from the mayor,” is not in conflict with Federal Constitution or the 14th Amendment, which does not destroy the power of the States to make police regulations as to subjects within their control, and does not give the citizen the right to use public

property of the State in a manner contrary to its laws. *Davis v. Massachusetts*, 167 U. S., 43.

Regulation of houses of ill fame.—The ordinance of New Orleans prescribing limits in that city outside of which no lewd woman shall dwell is lawful exercise of the police power; and does not deprive owners of property in or adjacent to such limits of their property without due process of law. *L'Hote v. New Orleans*, 177 U. S., 587.

Sale of cigarettes.—The ordinance of the city of Chicago which authorizes the sale of cigarettes, but only on payment of a license of \$100, is no violation of the Federal Constitution. *Gundling v. Chicago*, 177 U. S., 183.

Flowing or waste of natural gas.—The statute of Indiana of March 4, 1893, forbidding owners, etc., of natural gas wells to allow or permit the flow of gas into the open air, and requiring it to be safely confined, does not conflict with the 14th Amendment, but is lawful exercise of police power. *Ohio Oil Co. v. Indiana*, 177 U. S., 190.

The exaction of tolls, under a State statute for the use of an improved natural waterway, is not within the prohibition of the Constitution that no State shall deprive a person of his property without due process of law. *Sands v. Manistee River Imp. Co.*, 123 U. S., 288; *Huse v. Glover*, 119 U. S., 543.

It is not depriving of property without due process

of law to subject the logs of one owner in a log boom to a lien for fees of the surveyor général, for surveying and scaling all the logs in the boom, nor is it a burden on interstate commerce. *Lindsay and Phelps Co. v. Mullen*, 176 U. S., 126.

Diligence in delivering telegraph dispatches.—A State can impose a penalty for lack of diligence in delivering telegrams; and this is not an interference with interstate commerce, though it applies to lines wholly or partly within the State. *Western U. Tel. Co. v. James*, 162 U. S., 650.

Declaring liability of private corporations.—A statute of Indiana making railroad or other corporations, except municipal, liable for damages for personal injury in certain cases specified, does not conflict with the 14th Amendment. *Tullis v. Lake Erie & Western R. Co.*, 175 U. S., 348.

State regulation of carriers' rates.—1. The common-law doctrine is that common carriers or other persons exercising a public employment can not charge more than a reasonable compensation for their services, and it is in the power of the State legislature to declare, as to traffic wholly within the State, what shall be a reasonable compensation, or to fix a maximum beyond which any charge would be unreasonable. *Munn v. Illinois*, 94 U. S., 133; *Chicago, B. & Q. R. R. Co. v. Iowa*, 94 U. S., 155.

2. If the rates are improperly fixed the legislature,

not the courts, must be appealed to for the change. *Peik v. C. & N. W. R'y Co.*, 94 U. S., 164; *C. M. & St. Paul R. R. Co. v. Ackley*, 94 U. S., 179; *Winona & St. Peters R. R. v. Blake*, 94 U. S., 180; *Stone v. Wisconsin*, 94 U. S., 181; *Dow v. Beidelman*, 125 U. S., 680; *Stone v. Farmers' Loan & Trust Co.*, 116 U. S., 307; *Stone v. Ill. Cent. R. R.*, 116 U. S., 352; *Same v. New Orleans, etc., R. R.*, 116 U. S., 352.

3. But this power is not without limit. The State can not under pretense of regulation require a railroad company to carry without reward; neither to do that which amounts to taking of private property for public use, without due compensation or without due process of law. 116 U. S., 331.

4. A statute fixing 3 cents per mile as the maximum, within the State, and classifying railroad corporations by the length of their lines, was held as not depriving of property with due process of law. *Dow v. Beidelman*, 125 U. S., 680.

5. And, under the 14th Amendment, it is held that when a State fixes rates so unreasonable as to practically destroy the value of the property of the companies engaged as carriers, the courts of the United States may treat it as a *judicial* question, and hold such legislation to be in conflict with the Constitution of the United States as depriving the company of property without due process of law and as depriving it of the equal pro-

tection of the laws. *St. Louis, etc., R. R. Co. v. Gill*, 156 U. S., 649.

6. The reasonableness or unreasonableness of rates prescribed by a State, as to transportation wholly within the State, must be determined without reference to interstate business done or the profits derived therefrom. *Smyth v. Ames*, 169 U. S., 466.

7. It is within the power of a court of equity of the United States, having jurisdiction, to decree that the rates so established are unreasonable and unjust and to restrain their enforcement; but it can not establish rates itself nor restrain the State railroad commissioners (who are authorized by the State laws to fix rates) from again establishing rates. *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S., 362. See, *ante*, p. 338.

Decisions of State tribunal as to a State office.—The decision of a State tribunal, against a claimant to a State office, does not deprive him of property, within the meaning of the 14th Amendment, so as to give jurisdiction to the Supreme Court of the United States on a writ of error. *Taylor v. Beckham*, 178 U. S., 548.

VII. *Instances where local taxation has been upheld as not contravening the 14th Amendment.*

1. *State may tax bridge crossing river into another State.*—To bring taxation by a State within the provisions relating to due process of law, the case must be so clearly an illegal encroachment as to be spoliation. A bridge across the Ohio river at Henderson, Kentucky,

was taxed by the municipal authorities of the city on the Kentucky side. *Held*, that it was a proper subject of taxation there, though the river, as a navigable stream, is under the control of Congress. *Henderson Bridge Co. v. Henderson*, 173 U. S., 592, 624.

2. *Franchise tax held valid as not discriminating against foreign company.*—The New York statute imposing a franchise tax upon corporations doing business in the States, does not deny equal protection because it exempts corporations wholly engaged in manufacturing or mining within the State, since no discrimination is made in that regard between domestic and other corporations. It does not operate to tax the products of a foreign corporation brought into the State. Where the franchise tax is based upon the amount of capital employed by the corporation in the State, it is not rendered illegal by the fact that such capital is employed in interstate or foreign commerce. *State v. Roberts*, 171 U. S., 658.

3. *State may tax the interest of a non-resident mortgagee in the mortgaged land.*—The statute of a State (Oregon) which imposes a tax upon a mortgagee's interest in land as real estate, regardless of the residence of the mortgagee, does not deprive him of his property without due process of law nor deny him the equal protection of the laws. *Savings & Loan Soc. v. Multnomah Co.*, 169 U. S., 421. The reasoning of the court in this case is that the interest of the mortgagee can be assessed irre-

spective of the personal debt, and the interest of the mortgagor can be separately assessed. The Constitution of Oregon forbids the taxing of promissory notes or other instruments, but provides for the taxing of the interest in the real estate, which is a mere security for such debt. This case is to be noted with *Kirtland v. Hotchkiss*, 100 U. S., 491, where it was held that debts to persons residing in one State and secured by mortgages in another might for purposes of taxation be taxed at the domicile of the creditor. He is therefore exposed to double taxation. He must pay tax on the chose in action where he resides, and for the security on land by mortgage which secures it he is taxed where the land is. The court approves the language of *Tryon v. Munson*, 77 Pa. St., 250. "There is a manifest difference between the debt, which is a mere chose in action, and the land which secures its payment. Of the former there can be no possession except that of the writing which evidences the obligation to pay; but of the latter, the land or pledge, there may be. The debt is intangible, the land tangible. The mortgage passes to the mortgagee the title and right of possession to hold till payment shall be made."

4. *Inheritance tax by State valid.*—The provisions of the 14th Amendment, securing the equal protection of the laws, does not prevent the States from distinguishing, selecting and classifying objects of legislation, so long as the classification is based on some reasonable

ground, and is not merely arbitrary. *Magoun v. Ill. Trust & Savings Bk.*, 18 Sup. Ct. Rep., 594. In this case it is held that the amount of property exempted from an inheritance tax is entirely in the discretion of the State legislature. The law of Illinois taxing strangers to the blood 3 per cent. on legacies of \$10,000 or less, 4 per cent. on those between \$10,000 and \$20,000 and 5 per cent. on legacies between \$20,000 and \$50,000, and 6 per cent. on all above \$50,000 was held a reasonable classification, and not a denial of the equal protection of the law. *Id.*

A law of the State of Louisiana imposing a tax on legacies payable to aliens, is not repugnant to the Constitution of the United States. *Mager v. Grima*, 8 How., 492.

5. *State may create new or special taxing districts.*—A statute of Connecticut placed five towns in a class, and made them a municipal corporation, for the purposes of maintaining highways and bridges. They were subjected to a different control in respect thereto from other towns. A taxpayer against whom taxes were levied by this corporation can not claim that he is denied the equal protection of the laws. *Williams v. Eggleston*, 170 U. S., 304. It is not proceeding without due process of law, for the State legislature to create new taxing districts and assigning the territory to belong to them. *Id.*

Dog taxes.—A State statute providing that no dog

shall be entitled to the protection of the law, unless placed upon the assessment rolls, and that in a civil action for killing a dog, the owner can not recover beyond the value fixed by himself in the last assessment roll, is within the police power of the State. *Sentell v. New Orleans, etc., R. Co.*, 166 U. S., 698.

Exemption of property from taxation.—The 14th Amendment does not compel the States to adopt an iron-rule of equal taxation. It leaves that subject to the several States. They may exempt certain property, impose and vary the rates on trades and professions, or on products, subject only to the Constitution of the State. *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S., 232.

Taxation of National bank shares.—The Massachusetts law for the taxation of shares of National banks held not to deny the equal protection of the laws as they do not impose a disproportionate or unequal tax upon such banks. *Bank of Redemption v. Boston*, 125 U. S., 60. The fact that the State laws exempt savings' banks and trust deposits from like taxes does not violate the 14th Amendment. *Mercantile Bank v. New York*, 121 U. S., 138; *Davenport Bank v. Davenport*, 123 U. S., 83. See, *ante*, p. 35.

An *ad valorem* assessment of cost of irrigation appliances instead of an assessment on the basis of benefit is not a taking of property without due process of law. *Fallbrook Irrigation Dist. v. Bradley*, 164 U. S., 158, 175, 176.

The city charter of Portland, Ore., grants in general

terms power to the common council to construct sewers and assess cost of same on benefited property. This is not depriving of property without due process of law, even though it contain no express provisions for notice of such assessment. *Paulsen v. City of Portland*, 149 U. S., 30. The giving of notice is implied in the statute or ordinance. *Id.*

The repeal of a statute authorizing a water company to set off its water rates owing it by the city against taxes due the city is not a depriving of the city of property without due process of law, in the sense in which the word "property" is used in the Constitution. *New Orleans Water Works v. New Orleans*, 142 U. S., 79. The statute allowed the city free use of water for municipal purposes and gave the company exemption from taxation.

Taxation of foreign corporations on proportionate bases.—The Ohio statute (R. S., secs. 2777–2780) taxing telephone, telegraph and express companies on property within the State, the value of which is determined with reference to the entire capital of the company, is not a tax on property beyond the jurisdiction of the State and is not a taking of property without due process of law. *Sandford v. Poe*, 165 U. S., 194. Nor, does it deny the company the equal protection of the laws. *Id.*

Tolls for waterways.—The exaction of tolls, under a State statute, for the use of an improved natural waterway, is not within the prohibition of the Constitution

that no State shall deprive a person of his property without due process of law. *Sands v. Manistee, etc., Co.*, 123 U. S., 288.

Making tax deeds conclusive evidence.—A State law, making tax deeds after having been of record a stated time, conclusive evidence that there was no irregularity in the proceedings antecedent to and in issuing the deed, is a statute of limitations and not in conflict with the 14th Amendment. *Saranac Land, etc., Co. v. Comptroller of New York*, 177 U. S., 318.

The amendment operates retrospectively against laws passed before its adoption.—The provision of the 14th Amendment forbidding the States to deprive any person of his property without due process of law, so far operates retrospectively as to prevent such taking after the amendment, under authority of a statute passed prior thereto. *Kaukauna Water Power Co. v. Green Bay & Miss. Canal Co.*, 142 U. S., 254. A proceeding under a State statute may now violate the 14th Amendment which would not have violated the Constitution before the adoption of that amendment. *Id.*

Privileges and immunities as to voters.—The Mississippi Constitution and laws pursuant thereto forbidding any but persons who can read and write and have paid their taxes from voting or being qualified electors or jurors, does not violate the 14th Amendment, because it may operate as a discrimination against the colored race. *Williams v. Mississippi*, 170 U. S., 213.

Decisions relating to and definitive of "due process of law"—*Due process of law defined.*—"The clause in the 14th Amendment 'without due process of law' is intended where used in the State and Federal Constitutions as an additional security against the arbitrary deprivation of life and liberty and the arbitrary spoliation of property." "By 'due process of law' is meant one which follows the forms of law appropriate to the case, and just to the parties affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the judgment sought. A law authorizing a tax or assessment on property according to its value does not infringe the 14th Amendment." *Hagar v. Reclamation Dist.*, 111 U. S., 701.

The words "due process of law," in the 14th Amendment, do not necessarily require an indictment by a grand jury in a prosecution by a State for murder. Where State Constitutions, like those of Michigan, California and Wisconsin authorize such crimes to be charged and tried upon information filed, this is due process of law, in such States. *Hurtado v. California*, 110 U. S., 516.

Tax.—The due process implies, at least conformity, with natural and inherent principles of justice, and forbids the taking of property without compensation, or the condemnation of any person or property without oppor-

tunity to be heard in defense. *Holden v. Hardy*, 169 U. S., 366.

The term "due process of law" means a course of legal proceedings according to the rules and principles which have been established in our jurisprudence for the protection and enforcement of private rights. *Pennoyer v. Neff*, 95 U. S., 714; *Kennard v. Louisiana*, 92 U. S., 480; *Hagar v. Reclamation Dist.*, 111 U. S., 701.

"Due process of law" in a State is regulated largely by the law of the State. *Walker v. Sauvinet*, 92 U. S., 90.

Instances of depriving of property without due process of law.

1. *Compelling corporation to surrender land for elevator.*—An order of a State court, requiring a railroad company to surrender land to private individuals to be used as a site for an elevator, is taking of private property without due process of law. *Mo. Pac. R. Co. v. Nebraska*, 164 U. S., 403.

2. *Making non-resident personally liable for taxes.*—A State statute which attempts to make a non-resident lot owner liable personally for assessment for local improvements amounts to taking property without due process of law. And by resorting to the State court for relief the non-resident does not thereby consent to such personal liability. *Dewey v. Des Moines*, 173 U. S., 193.

A judgment of a State court even if authorized by

statute, whereby private property is taken for the State, or under its direction, without compensation made or secured to the owner, is wanting in the due process of law required by the 14th Amendment. *Chicago, B. & Q. R'y Co. v. City of Chicago*, 166 U. S., 226.

Where several railroad companies use the tracks of a railroad, under a viaduct, in a city, some as lessees of the others, under an agreement the terms of which are unknown to the authorities, it can not be held that a statute and ordinance throwing on the lessor the burden of repairs is a denial of equal protection. *Chicago, B. & Q. R'y v. Nebraska*, 170 U. S., 57.

What is depriving of liberty without due process of law.—The "liberty" of which a person can not be deprived without due process of law includes not only the right to be free from mere physical restraint of his person by incarceration, but the term is deemed to embrace the right of a citizen to be free in the employment of his faculties; to be free to use them in lawful ways; to earn his livelihood by any lawful calling; to pursue any lawful avocation, and for that purpose to enter into lawful contracts. A State statute which prohibits a citizen of the State, under an open policy of marine insurance, effected outside the State, from sending a letter by mail or a telegram describing particular goods then within the State, operates to deprive of liberty without due process of law. *Allgeyer v. Louisiana*, 165 U. S., 578.

Due process of law, when secured.—Due process of

law, within the meaning of the 14th Amendment, is secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government. *Duncan v. Missouri*, 152 U. S., 377; *Giozza v. Tiernan*, 148 U. S., 657; *Mo. Pac. R. Co. v. Mackey*, 127 U. S., 205; *Minn. & St. L. R. Co. v. Herrick*, 127 U. S., 210; *Leeper v. Texas*, 139 U. S., 462.

A State legislature performs its whole duty in providing due process of law, when it enacts laws for the governance of its courts, while exercising their respective jurisdictions, which, *if followed*, will afford the necessary protection to the parties. The fact that the judge may err does not cast the State in violation of constitutional obligations. *Arrowsmith v. Harmoning*, 118 U. S., 194.

Due process of law, as affecting proceedings in courts. Too short notice.—Five days' notice to a non-resident of a suit to foreclose a vendor's lien, where it would take four days' constant travel to reach the place of trial, is insufficient to constitute due process of law. *Roller v. Holly*, 176 U. S., 398.

Each State construes its own laws, with respect to admission to practice before its own courts. *In re Lockwood*, 154 U. S., 116.

The State has full control over the procedure in its courts both in civil and criminal cases subject only to the qualification that such proceeding must not work a denial of fundamental rights or conflict with specific and

applicable provisions of the Federal Constitution. *Brown v. New Jersey*, 175 U. S., 172; *Ex parte Reggel*, 114 U. S., 642; *Iowa Cent. R'y Co. v. Iowa*, 160 U. S., 389; *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S., 226.

Administration of estates of living persons.—When a court of probate appoints an administrator of the estate of a *living* person, who has been absent and not heard from for over seven years, such appointment being made after published notice and on the presumption that he is dead, the living person having no notice in fact of the proceedings, the proceedings are without jurisdiction; and the person, whose lands are sold under such administration to pay his debts, is deprived of his property without due process of law. *Scott v. McNeal*, 154 U. S., 34.

When procedure in courts is "due process of law."—When the legislature of a State enacts laws which provide for the government of its courts while exercising their respective jurisdictions which, if followed, will furnish parties the necessary constitutional protection, it performs its whole duty to the Constitution. The Supreme Court refused to reverse the judgment of the State court, where the question turned on the validity of a sale of land by a guardian, where the only irregularity was that the Probate Court dispensed with the giving of a bond. This was held not a depriving of the ward of his property without due process of law, such as

to invoke Federal jurisdiction. *Arrowsmith v. Harmoning*, 118 U. S., 194.

The first section of the 14th Amendment to the Constitution of the United States contemplates the protection of persons and to prevent their being denied the equal protection of the laws. It does not prohibit the States from prescribing the jurisdiction of their own courts, either as to territorial limit, subject-matter or amount. *Missouri v. Lewis*, 101 U. S., 22.

When party not entitled to jury trial as due process of law.—The provision of the 14th Amendment that a State shall not deprive any person of life, liberty or property without due process of law does not prevent the State from giving jurisdiction to courts of equity of a suit brought by the owner of an equitable interest in land to establish his rights against the holder of the legal title, because it deprives the holder of the legal title of the right to trial by jury which he would have in a suit at law. *Church v. Kelsey*, 121 U. S., 282; *Pembina Mining Co. v. Penn.*, 125 U. S., 181.

Proceedings according to the common law *for contempt of court* are not subject to the right of trial by jury and are “due process of law” within the meaning of the 14th Amendment. *Eilenbecker v. Plymouth Co.*, 134 U. S., 31; *Ex parte Terry*, 128 U. S., 289.

A jury is not an essential to “due process of law” in proceedings *for contempt*. *Tinsley v. Anderson*, 171 U. S., 101. *In re Debs*, 158 U. S., 564, 568.

The equal protection of the laws is not denied in proceedings for contempt, where the same course of procedure is followed that would be pursued in a proceeding against any other person under similar circumstances. *Id.*

"Due process of law" does not require jury trial in *quo warranto* proceedings in a State court. *Wilson v. North Carolina*, 169 U. S., 586, 600.

Struck juries.—The States may by statute provide for struck juries and such provisions are not in contravention of any provision of the Federal Constitution; and the decision of the highest court of the State that they are constitutional in that State is conclusive on the Federal Supreme Court. *Brown v. New Jersey*, 175 U. S., 172.

Due process of law—procedure. Libel in a pleading—Right of action may be denied.—A person is not deprived of his reputation, even if it constitutes property, without due process of law, by denying his right of action for damnatory words published in a pleading, where the matter complained of as defamatory was pertinent and material. *Abbott v. Bank*, 175 U. S., 409.

Who concluded by judgment.—One who actively defends an action to which he is not technically a party, can not claim, when brought in by rule to show cause after judgment rendered, that he was denied due process of law. *Louisville, etc., R. Co. v. Schmidt*, 177 U. S., 230.

Setting aside or enjoining judgment due process of law.—A bill in equity to invalidate a judgment against the defendant in an action for tort committed under military authority, in accordance with the usages of civilized warfare and as an act of public war is “due process of law” and not in conflict with the Constitution of the United States. *Freeland v. Williams*, 131 U. S., 405.

What steps in court procedure are not inconsistent with “due process of law.”—A bill in equity brought to invalidate a judgment obtained in trespass *de bonis asportatis* for the taking and conversion of cattle, which were taken under military authority in time of and as an act of public war, and, also, to enjoin its enforcement, is due process of law. A judgment obtained for such act is not *a contract* and is not impaired by such an act as that of West Virginia in 1872, which forbade the sale or seizure of any property under final process founded upon such judgments. *Freeland v. Williams*, 131 U. S., 405.

The 14th Amendment does not limit the powers of States in dealing with crime within their borders, except that no State can deprive particular persons, or classes of persons, of equal and impartial justice under the law. Laws operating on all alike, and not subjecting the individual to the arbitrary powers of government unrestrained by the established principles of private right and distributive justice, secure due process of law.

Whether statutes of a State have been duly enacted in accordance with the Constitution of such State is not a Federal question. The decision of the State Court as to what are laws in that State are binding. *Leeper v. Texas*, 139 U. S., 462.

The provisions of a statute of a State (Arts. 1242-1245 of Texas), which construe a special appearance into a general appearance do not violate the 14th Amendment. *York v. Texas*, 137 U. S., 15. .

The 14th Amendment was not designed to interfere with the power of a State to protect the lives, liberty and property of its citizens, nor with the exercise of that power in the adjudications of courts of the States in administering the process provided by its laws. *In re Converse*, 137 U. S., 624. One convicted of embezzlement under one section of the Michigan statute, confessed to embezzlement under another section, and was sentenced accordingly. *Held*, that this was not a violation of the 14th Amendment. *Id*.

One is not deprived of liberty without due process of law, in violation of this Amendment, by being tried and sentenced by a judge of a court who is a *de facto* judge of a court *de jure*. *In re Manning*, 139 U. S., 504.

The laws of Missouri provide that in all capital cases, except in cities having a population of over 100,000, the State shall be allowed eight peremptory challenges to jurors, and in such cities, shall be allowed fifteen. This is not a denial of the equal protection of the laws within

the meaning of the 14th Amendment. *Hayes v. Missouri*, 120 U. S., 68.

A person was arrested in Texas on requisition from Alabama, on an indictment for embezzlement and larceny. It was sought to obtain his discharge in Texas on *habeas corpus* on the ground of the insufficiency of the indictment. The Texas court decided that he should be extradited; and the Supreme Court of the United States held that this decision denied no right secured by the Constitution. *Pearce v. Texas*, 155 U. S., 311.

The statute of Missouri, as construed by the Supreme Court of that State, authorizes a special administrator, who is placed in charge of the estate pending the contest of the will, to have a final settlement of his accounts without notice to the distributees of the estate, is conclusive in the absence of fraud. The administrator or administratrix with the will annexed, or executor, represents in such matters all who claim under the will. *Robards v. Lamb*, 127 U. S., 58.

A statute framed in accordance with the laws of Texas charging that the prisoner at a time and place named, "did unlawfully and with express malice aforethought kill one J. M. S. by shooting him with a gun, contrary," etc., does no violation to the 14th Amendment. *Caldwell v. Texas*, 137 U. S., 692.

When a prisoner sentenced to death carries his case to an appellate court due process of law does not require that he be present when the appellate court pronounces

its judgment, as, if it be of affirmance, no new sentence is imposed but merely a direction given that the former be carried into execution. *Schwab v. Berggren*, 143 U. S., 442; *Fielden v. Illinois*, 143 U. S., 452.

One under sentence of death in a State court insisted that the warrant for his execution was issued contrary to the State statute. The court decided against him. This is held by the Supreme Court as not to involve denial of due process of law. *Lambert v. Barrett*, 159 U. S., 660.

The dismissal of an appeal in a criminal case by a State Supreme Court, after the criminal has escaped, unless he shall surrender or be recaptured, is not a taking without due process of law. *Allen v. Georgia*, 166 U. S., 138.

A right of review in capital cases is not an indispensable element of due process of law, as the right of appeal may be regulated in each State by its own laws. *McKane v. Durston*, 153 U. S., 684, 687; *Andrews v. Swartz*, 156 U. S., 272.

A statute of a State providing that a prosecutor may be adjudged to pay costs, if it be found that he had instituted the prosecution maliciously and without probable cause, is valid. *Lowe v. Kansas*, 163 U. S., 81.

An indictment which does not specify the decree of murder charged, does not deny the accused the equal protection of the law, nor constitute lack of due process of law. *Bergemann v. Backer*, 157 U. S., 655.

Where the prosecution of a capital offense is by information instead of indictment, it is due process of law. *McNulty v. California*, 149 U. S., 654. *Vincent v. Same*, 149 U. S., 648.

The question whether a proceeding is "due process of law," within the meaning of the Constitution, is independent of the question whether the proceeding was by ordinary action or motion or other steps, so that it was according to the statute which provided for notice and opportunity to be heard. *Iowa Cent. R'y v. Iowa*, 160 U. S., 389.

The Kansas statute, allowing a fee to the plaintiff's attorney, on recovering damages resulting from fire caused by the operation of railroad trains, is a regulation, reasonably relevant to the object sought, and does not contravene the 14th Amendment. *Atchison, etc., R. Co. v. Matthews*, 174 U. S., 96.

A State statute which provides for an inquisition of lunacy after verdict in a capital case, by a jury, not in the presence of a court or a judge, is not a denial of due process of law. *Nobles v. Georgia*, 168 U. S., 398.

A statute requiring a bond as a prerequisite to the issue of an attachment against a resident, when sued out against a resident, but requiring no bond when sued out against a non-resident, is not a violation of the 14th Amendment. *Central Loan and Trust Co. v. Campbell Commission Co.*, 173 U. S., 84.

Escheat.—A statute providing for judgment of

escheat, after due notice by publication to unknown heirs, is due process of law. *Hamilton v. Brown*, 161 U. S., 256.

The repeal of a statute of limitations, as applied to a debtor, against whom the right of action is already barred, does not deprive him of his property in violation of the 14th Amendment. *Campbell v. Holt*, 115 U. S., 620.

A State law simply forbidding a defendant to come into court and challenge the validity of service upon him in a personal action without submitting himself to the jurisdiction of the court, but which does not attempt to restrain him from fully protecting his person, his property and his rights against any attempt to enforce a judgment rendered without due process of law, is not forbidden by the Fourteenth Amendment. *Kauffman v. Wootters*, 138 U. S., 285.

It is so held where a receiver was appointed and an officer of the corporation was committed for contempt till he obeyed an order which he had refused to obey. His imprisonment was not indefinite or uncertain because he could at any time obtain his discharge by obeying the order. A jury trial is not essential to due process of law in a contempt proceeding. *Tinsley v. Anderson*, 171 U. S., 101.

"The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities

in these respects may exist in two States separated only by an imaginary line; on one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribes its own modes of judicial proceeding. *Missouri v. Lewis*, 101 U. S., 22, 31. And the statute of Missouri, which increased the number of challenges allowed the State in capital cases to 15 (only eight being allowed elsewhere) in cities of over 100,000 inhabitants, does not deny to persons accused of crime the equal protection of the laws." *Hayes v. Missouri*, 120 U. S., 68.

VIII. *Instances where exercise of eminent domain has been held to be by due process of law.*

Condemnation proceedings, whereby property is taken for public use, are not without due process of law merely because the courts change their rulings to hold that the proceedings shall be before a common-law jury rather than a jury of inquest, as theretofore decided, nor because the statute prescribes that certain objections shall be deemed waived if not specified at a particular stage in the proceedings. *Backus v. Depot Co.*, 169 U. S., 557, 556.

A statute of California for the widening of a street provided the usual method of taking property for that public use. When pursued in the usual method and assessment is made according to benefits, and allowing an aggrieved person to apply to the court for rehearing, it is due process of law. *Lent v. Tillson*, 140 U. S.,

316, 325; following in principle the Kentucky Railroad Tax Cases, 115 U. S., 321, 331; *Spencer v. Merchant*, 125 U. S., 345, 355.

Servitudes imposed without compensation.—The imposition of a servitude by the public authorities upon land owned by a citizen of another State for the purpose, under the same law that imposed like servitude on a resident owner under like circumstances, is equal protection and due process of law. So held under the Louisiana levee laws, where the taking is held to be under the police power and that no one is entitled to compensation for such land as is used to build levees against the river. *Eldridge v. Trezevant*, 160 U. S., 462.

Drainage laws, when valid.—The drainage laws of New Jersey, providing for draining low, wet or sandy lands, on petition of some of the owners and assessing the expense on the owners, by commissioners, does not deprive of property without due process of the law. *Wurts v. Hoagland*, 114 U. S., 606.

Assessment of damages by commission is due process of law, in condemnation proceedings, if there be right of review by the courts. *Long Island Water Supply Co. v. Brooklyn*, 166 U. S., 685. There is no denial of due process of law in making the findings of the jury or commissions final, when the courts can determine in review whether an erroneous basis were adopted. *Id.*

When a contract with a city has been declared *ultra vires* and void, it can not be impaired, and subsequent

legislation of the State in respect to it, authorizing a tax which the void contract exempted the contractor from, is not a taking of property without due process of law. *City of New Orleans v. New Orleans Water Works Co.*, 142 U. S., 79.

The statute of a State, authorizing any person to erect and maintain a watermill and mill dam on streams not navigable, paying to the owners of lands flowed damages assessed in a judicial proceeding, does not deprive them of their property without due process of law, in violation of the Fourteenth Amendment.

In condemnation proceedings commenced under a State statute for condemnation of land for the uses of a railway, a published notice to non-residents is sufficient notice and is "due process of law" as applied in such cases. *Huling v. Kaw Valley, etc., R. Co.*, 130 U. S., 559.

Where, under the Constitution and laws of a State, consequential damages to property abutting on a street are not recoverable, a statute authorizing the occupation of a portion of such street, not adjacent to the property, by a railroad company without providing compensation to the owner, is not a deprivation of property without due process of law. *Meyer v. Richmond*, 172 U. S., 83.

A decision of a State supreme court that the building and operation of an elevated railroad along one side of a street does not constitute an injury or destruction of property on the other side can not be reviewed by the

United States Supreme Court on the theory that it is a taking of property without compensation. *Marchant v. Penn. R. Co.*, 153 U. S., 380. Nor does the allowance of damages to one on one side as for a taking and denial of damages to one on the other side amount to denial of equal protection of the laws. *Id.*

The Act of June 29, 1848, providing for the improvement of the Fox and Wisconsin rivers, and for connecting the same by a canal, declared that any water power created by such dams should belong to the State. The State afterwards granted all these rights and privileges to an improvement company, and to this company the owner of certain lots granted the right to erect and forever maintain an embankment in front of the lots. It was held:—

1. That this operated as a surrender of all riparian rights, including any claim the owner of the lots might have to the surplus water.

2. That though the act of 1848 failed to provide adequately for compensation of land owners whose lands might have been taken for such improvement, to which abutting owners were entitled, yet—

3. The property and franchises of the improvement company having been transferred to a canal company (by foreclosure, purchase and reorganization), this company subsequently conveyed to the United States all its improvements, dams, etc., reserving the right to the surplus water power created by the dam, the duty to make

compensation where riparian owners were entitled to it, followed the public use, and the United States became liable therefor.

4. The Congress by Act of 1875 (18 Stat. at L., 506) made provision for compensating all owners who had failed to take measures to obtain compensation during the 14 years the act providing the compensation was in force (it having been repealed in 1888), were deemed to have waived their right to compensation.

5. A land owner, who had thus waived his right to compensation, could not after thus estopped, take the remedy in his own hands, but could be enjoined from so doing at the suit of the canal company owning the surplus water not required for uses of navigation. *Green Bay & Miss. Canal Co. v. The Kaukauna Water Power Co.*, 142 U. S., 254.

This litigation was continued in another phase. The Supreme Court of Wisconsin decided in a later suit brought by the Patten Paper Co. against the Canal Company and others, that the water power could not be diverted from its natural channel, by the State or its grantees, to the injury of lower riparian owners, through the canal or sluiceways therefrom; but that the Canal Company were, in the use of the power, under the general rule that the owner of a dam must return the water to the stream in such a manner and at such a place as not to deprive lower riparian owners of its use as it was accustomed to flow past their lands. *Green Bay &*

Miss. Canal Co. v. Kaukauna Water Power Co., 90 Wis., 370. This case was carried to the Supreme Court of the United States on writ of error, and reversed in *Green Bay & Miss. Canal Co. v. Patten Paper Company*, 172 U. S., 58, the court holding that the reservation to the State of all the water power incidentally created in making the public improvement was lawful, and the subsequent conveyance carried full title to the canal company free from claims of other riparian proprietors, whose remedy, if injured, was by compensation to be obtained by statutes under which the improvement was made; and that the sole power to regulate the disposition or use of the surplus waters accumulated by the dams built became vested in the United States, when it acquired and took the improvements; and that the canal company is the sole owner of the power, subject only to the control and regulation of the water by the United States.

Taxing personalty of non-resident.—Under the laws of Minnesota, investments by a non-resident are subject to taxation, when made by a resident agent, who is employed to invest and re-invest moneys, at whose office the loans are made payable and who retains the mortgages securing them, and to whom the notes taken from the loans are returned from time to time, whenever required for the purpose of renewal, collection or foreclosure of securities, notwithstanding the notes and securities are sent out of the State to the principal, and the agent has

no authority to execute satisfactions of mortgages, under the rule that the creditor may give a business situs to his property in the chose in action elsewhere than his domicile. *Bristol v. Washington Co.*, 177 U. S., 133.

Evading taxing laws of State.—While United States treasury notes are not as a rule taxable by the States, yet where a person who had moneys on a general deposit, drew out a day or two before the day of assessment, and took the amount in legal tender notes, and, which he re-deposited as a special deposit, this was held an evasion of the State tax laws, and he could not plead exemption of the same from taxation. *Shotwell v. Moore*, 129 U. S., 590.

The re-assessment of property grossly undervalued at the first assessment so as to impose upon it its just burden of taxation, does not violate the Constitution in depriving of property without due process of law. *Weyerhaeuser v. Minnesota*, 176 U. S., 550. And the failure to provide for a rehearing before the governor, pursuant to Gen. Laws, 1893, c. 157, does not make the proceeding void for want of due process of law. *Id.*, 485.

Re-assessment of taxes, where the first assessment failed for irregularity of notice, is not in violation of the Fourteenth Amendment because of short notice given to the owner. *Bellingham Bay, etc., Co. v. New Whatcom*, 172 U. S., 320.

Taxes for highway improvements.—Where the legislature of a State, in exercise of its taxing power, directs

that the expense of laying out, grading or repairing a street be assessed upon the owners of lands benefited thereby, and determines the whole amount of the tax and what lands are benefited; and provides for notice to and hearing of the owner at each stage upon the question as to the proposition of the tax to be assessed upon his land, there is no taking of his property in violation of the Fourteenth Amendment. *Spencer v. Merchant*, 125 U. S., 345; *Walston v. Nevin*, 128 U. S., 578.

In such matters of assessment, neither the corporate agency by which the work is done, the excessive price which the statute allows therefor, nor the relative importance which the work bears to the value of the land, nor that the assessments are unequal as regards the benefits conferred, nor that personal judgments are rendered for the amounts assessed are matters in which the State authorities are controlled by the Federal Constitution. *Spencer v. Merchant*, 125 U. S., 345; *Stanley v. Supervisors*, 121 U. S., 535, 550; *Mobile v. Kimball*, 102 U. S., 691; *Hagar v. Reclamation Dist.*, 111 U. S., 701; *United States v. Memphis*, 97 U. S., 284; *Laramie Co. v. Albany Co.*, 92 U. S., 307; *Walston v. Nevin*, 128 U. S., 578.

Provision for notice by publication or otherwise, to each owner of land to be assessed for a highway improvement and for hearing him at some stage of the proceedings, is due process of law. *Bauman v. Ross*, 167 U. S., 548.

Notices of tax proceedings, how far necessary.—The statute of a State providing for the assessment and collection of taxes, which gives notice of the proposed assessment to an owner of property to be affected by requiring him at a designated time and place to be present and give a statement of his property, with an estimate of its value, and gives opportunity to be heard and also resort to the courts to correct error or unfairness in assessment, does not deprive of property without due process of law, within the meaning of the Fourteenth Amendment. *Kentucky Railroad Tax Cases*, 115 U. S., 321.

A notice, given by the statute, of the time and place, at which the assessment of taxes is to be made is all that due process requires in the matter of notice of tax proceedings. *Merchants', etc., Bank v. Penn.*, 167 U. S., 461.

"Due process of law" does not require personal notice of assessment of one's property for taxation; nor is equal protection denied by allowing to railroad companies only one hearing before a county board and an appeal to a State board. *Pittsburg, etc., Co. v. Backus*, 154 U. S., 421. Denial by a State court, after a fair trial, of damages for depreciation of railroad property, is not a taking without due process of law. *Id.*

ARTICLE XV.

THE RIGHT OF SUFFRAGE.

Section 1. "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

Section 2. "The Congress shall have power to enforce this article by appropriate legislation."

Decisions under the Fifteenth Amendment summarized.—The Fifteenth Amendment does not confer the right of suffrage; but it exempts citizens from discrimination on account of their race, color or previous condition of servitude, and empowers Congress by appropriate legislation to enforce the right. On this article rests the power of Congress over the subject of voting at State elections; and such power can be exercised by providing a punishment only where the wrongful refusal to receive the vote of a qualified elector is, because of his race, color or previous condition of servitude. *United States v. Reese*, 92 U. S., 214.

The third and fourth sections of the Act of May 3d, 1870 (16 Stats. at L., 140), provided, in effect, (1) that whenever by or under the Constitution or laws of a State, etc., any act is or shall be required to be done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of such citizen to perform the act required to be done "as aforesaid" shall, if it fail to be

carried into execution by reason of the wrongful act or omission "aforesaid" of the person or officer charged with the duty of receiving or permitting such performance, or offer to perform, be deemed and held as a performance in law of such act; and the person so offering and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act, and penalties were imposed for the refusal to receive and count his vote, or allow him to qualify, or by force, bribery, threats, intimidation or other unlawful means, hindering, delaying, preventing or obstructing any citizen from doing any act required to be done to qualify him to vote or from voting at any election.

These sections were held void, being penal and strictly construed because their penal provisions were not confined to unlawful discrimination on account of race, color, or previous condition of servitude. The case arose upon an indictment against Reese for refusing as an inspector of a municipal election to receive the vote of a colored citizen. As the two sections were so broad in their terms as to cover wrongful acts outside of and beyond the constitutional jurisdiction of Congress to legislate upon the subject, it was held that Congress had not provided by appropriate legislation for the punishment of an inspector for refusing to receive and count a vote at such election. *United States v. Reese*, 92 U. S., 214.

Although it is true that the Fifteenth Amendment gives no affirmative right to the negro to vote, yet there are cases, some of which are the following: "In all cases where the former slave-holding States have not removed from their Constitutions the words 'white man' as a qualification to vote, this provision did in effect confer upon him the right to vote, because being paramount to the State law, it annulled the discriminating word 'white.'" And such would be the effect of any future constitutional provision of a State which should give the right of voting exclusively to *white* people whether men or women. *Neal v. Delaware*, 103 U. S., 370; *Ex parte Yarbrough*, 110 U. S., 651. In this case *United States v. Reese*, 92 U. S., 214, is qualified and explained.

The Constitution of the United States has not conferred the right upon any one, and the United States have no voters of their own creation in the States. *Minor v. Happersett*, 21 Wall., 178. Nor did the Fourteenth Amendment have this effect. *Id.*

Sections 5508 and 5520 of the Revised Statutes read as follows: Section 5508. "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another,

with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office or place of honor, profit or trust created by the Constitution of the United States."

Section 5520. "If two or more persons in any State or Territory, conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy, in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of the Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment." These provisions were held constitutional in *Ex parte Yarbrough*, 110 U. S., 651.

Effect of amendment on existing Constitutions of States.—The adoption of the 15th Amendment rendered inoperative the existing Constitution of a State whereby the right of suffrage was limited to the white race; and also operated to enlarge the operation of statutes so as to make colored electors eligible as jurors. *Neal v. Delaware*, 103 U. S., 370.



ADDENDUM.

The following was not inserted in its proper connection, and is here appended:

1. *Original jurisdiction of the Supreme Court, to issue habeas corpus.*—The Supreme Court may, in the exercise of original jurisdiction, issue writs of *habeas corpus*, in cases in which it has original jurisdiction, such as cases involving ambassadors, public ministers, and cases where a State is a party. *Ex parte Hung Hang*, 108 U. S., 522; *Ex parte Parks*, 93 U. S., 18; *Ex parte Bollman*, 4 Cranch, 75; *Burford's Case*, 3 Cranch, 348; *Ex parte Siebold*, 100 U. S., 371.

2. *Appellate jurisdiction of Supreme Court to issue or review cases of habeas corpus.*—The court may issue the writ of *habeas corpus* in cases where it has appellate jurisdiction, in the exercise of such jurisdiction. *Ex parte Siebold*, 100 U. S., 371.

(1) While ordinarily the Supreme Court will not issue its writ in appellate proceedings to review the proceedings of a judge at chambers (*In re Metzger*, 5 How., 176), it will do so when the proceedings have been filed in the Circuit Court. *Ex parte Lange*, 18 Wall., 103.

(2) And where the prisoner is held by an order beyond the authority of an inferior Federal court and

outside its jurisdiction, the Supreme Court will grant the writ.

(3) Or, when it appears that the prisoner is held without authority of law though by the judgment of a Federal court, the Supreme Court will issue both *habeas corpus* and *certiorari* to review the case and discharge the prisoner. *Ex parte Lange*, 18 Wall., 163.

(4) Where a circuit court of the United States exercising original jurisdiction has caused a prisoner to be brought before it, and after inquiring into the cause of his detention, has remanded him to confinement, the Supreme Court may issue the writ and also *certiorari* and reverse the decision of the Circuit Court and discharge the prisoner, if illegally confined. *Ex parte Yerger*, 8 Wall., 85.

(5) Where a prisoner is held for disobedience of a writ of *mandamus* the inferior Federal court had no jurisdiction to issue, the Supreme Court will release on *habeas corpus*. *Ex parte Rowland*, 104 U. S., 604.

(6) So, where one is imprisoned for contempt in violating an *illegal* order, the Supreme Court may discharge on *habeas corpus*. *Ex parte Fisk*, 113 U. S., 713.

Appellate jurisdiction over State courts.—Where a State court imprisons a man in a case where it is alleged the State court had not jurisdiction, as for example, in the case of violation of a Federal statute, the Supreme Court will not send its writ of *habeas corpus*

where no reason is shown why the case can not be reviewed on writ of error. *Ex parte Fonda*, 117 U. S., 516.

This subject is fully annotated in Gould and Tucker's Notes, under sections 751-765.

Impairing the obligation of contracts.—The Constitution of Minnesota reserves to the legislature the power to amend, alter or repeal, by vote of the people, a statute exempting a railroad company from taxation, upon its paying a percentage on its gross earnings. *Held*, that this could not be so exercised as to repeal the exemption while still requiring the payment of the percentage on its earnings. This was impairing the obligation of a contract between the State and the corporation. *Stearns v. Minnesota*, (Dec. 3, 1900).

Reserved power to alter, amend, or repeal a contract with a corporation, exempting it from ordinary taxes, can not be exercised in such manner as to relieve the State from the provision against impairing the obligation of contracts, by enactment of a statute which takes away the obligations of the State and retains those of the corporation, thus depriving the corporation of the consideration which induced it to assume onerous obligations to the State. *Duluth, etc., R. Co. v. St. Louis Co.* (Minn.), Dec. 10, 1900, following *Stearns v. Minnesota*.

The statute of Michigan (1885, c. 112) which allows stockholders of a corporation to cumulate votes on can-

didates for directors does not impair the obligations of the contract between the State and corporation as originally organized. *Looker v. Maynard*, (Oct. 15, 1900). The Constitution of Michigan reserves to the legislature the power to alter, amend or repeal the charters of corporations, which is the controlling fact in the case.

"Equal protection of the laws."—A corporation is not denied the equal protection of the laws relating to the assessment of property, by a statute relating to the correction of under valuation, where the same opportunity is given it, that is given to other persons, to correct an undervaluation of the property of individuals. *People v. Barber*, (Dec. 19, 1900).

A registration law applicable only to cities having a certain, or to exceed a certain, population does not deny to citizens residing in the only city in the State, having such a population, the equal protection of the laws. *Mason v. Missouri*, (Dec. 10, 1900).

A manufacturer engaged in the business of refining sugar is not denied the equal protection of the laws because he is required to pay a license tax, from which planters who refine the product of their own plantations are exempt. *American Sugar Refining Co. v. Louisiana*, (Nov. 15, 1900).

The sale of cigarettes.—The statute of Tennessee makes it a misdemeanor to sell or offer for sale in the State, or bring into the State for the purpose of selling, giving away or otherwise disposing of cigarettes, cigar-

ette paper or substitutes for the same. The Supreme Court, on writ of error to review a judgment of the Supreme Court of Tennessee, held:

1. The State can prohibit the sale of cigarettes in the exercise of police power, provided the prohibition does not apply to original packages or make any discrimination against cigarettes brought in from other states.

2. Paper packages 3 inches in length by 1½ inches in width, without any shipping address on such packages, taken from the factory by an express in a basket in which it carries them and from which it empties them on the counter of the consignor, do not constitute original packages within the meaning of those words as used in the interstate commerce decision. If there is any original package in the shipment it is the basket.

3. Tobacco is and has from time immemorial been a legitimate article of commerce. *Austin v. Tennessee*, (Nov. 19, 1900).

DECISIONS SINCE OCTOBER, 1900, ON POINTS OF
CONSTITUTIONAL LAW.

Equal protection of the laws.—A registration law applicable only to cities of 300,000 inhabitants or more, held valid by the highest court of the State, does not deny citizens residing therein the equal protection of the laws. *Mason v. Missouri*, 21 S. C. Reporter, 125.

A state law compelled emigrant agents, engaged in the business of hiring laborers to go outside of the State, to pay a license tax, but required no such tax of those engaged in hiring laborers within the State. *Held*, not to deny equal protection of the laws. *Williams v. Fears*, 21 S. C. Reporter, 128.

Due process of law.—Prosecution by information instead of indictment for crime, authorized by the State Constitution, is due process of law. *Davis v. Burke*, 21 S. C. Reporter, 210.

The question whether a convict to be executed under State authority shall be executed by the sheriff, or the warden of the penitentiary, or whether he escape punishment altogether, involves no Federal question as to due process of law. *Id.*

Impairing the obligation of a contract.—An act of the legislature of Louisiana provided for the refunding of certain debts of the city of New Orleans, and authorized the vote of bonds for that purpose. These bonds were

to be paid out of the proceeds of a one-per-cent. ad valorem tax. This was held not to impair the obligation of previously issued bonds in the hands of creditors though payable from the same tax.

"Although the United States Supreme Court exercises an independent judgment in determining whether a State law impairs contract obligations, yet when the contract arises from a State statute, the Supreme Court will, for the sake of harmony and to avoid confusion, lean towards an agreement of views with the State courts," where the question seems balanced with doubt. *Board of Liquidation, etc., v. Louisiana*, 21 S. C. Reporter, 263.

Extradition to foreign countries of persons accused of crime.—Cuba is, under present conditions, a foreign territory, within the Act of Congress providing for the extradition of persons violating foreign laws of a territory under occupation or control of the United States.

The fundamental guaranties of life, liberty and property embodied in the Constitution have no relation to crimes committed outside of the jurisdiction of the United States against the laws of a foreign country. *Neely v. Henkel*, 21 S. C. Reporter, 302.

The court takes judicial notice that Cuba was at the date of the Act of June 6, 1900 (providing for the extradition of persons charged with crimes against Cuba), and still is occupied by the United States and under

their control. Such control and occupancy can not be deemed unconstitutional or an unauthorized interference with the internal affairs of a friendly power, under the circumstances existing in Cuba. It is not competent for the judiciary to make any declaration as to the length of time such occupancy can continue, as that is purely a political question. *Neely v. Henkel*, id.

Ex post facto law.—A State statute of 1887, providing a heavier punishment for a person who had twice been convicted of a crime, and sentenced and convicted, held not *ex post facto* where he had twice been convicted before he was convicted under the statute. He was not punished for first crimes but for the one last committed. *McDonald v. Moss*, 21 S. C. Reporter, 389.

A degree annulling the charter of a corporation and enjoining its officers from acting as a corporation because of the illegality of its object does not take away property without due process of law. *New Orleans Debenture Co. v. State of La.*, 211 U. S. C. Rep., 384.

NOTE.—*Marbury v. Madison*, 1 Cranch, 137. This case, in the foregoing annotation, is cited only to the point of the jurisdiction of the Court, as that was the point on which the case was dismissed. It is really a most important exposition of the Constitution. The facts are these: As President Adams' term was about to expire he appointed Marbury, with others, as justice of the peace of the District of Columbia, and the senate

confirmed him. The commission was made out, signed and sealed and was ready for delivery, when President Jefferson assumed the office of President. He decided that the appointment was not complete until the delivery of the commission, and directed Mr. Madison, his Secretary of State, not to deliver the commission. Marbury applied to the Supreme Court for a writ of mandamus to compel the delivery. In an opinion, regarded as one of the ablest Chief Justice Marshall delivered, he, with the concurrence of the Court, laid down the following propositions:

1. Marbury's appointment was complete and vested in him the title to and legal right to exercise the office.

2. That *mandamus* was the proper remedy, and might issue from a court of competent jurisdiction to compel the Secretary of State to deliver the commission. This proposition that the executive and ministerial officers of the United States may be compelled by the courts to perform any plain, specific, legal duty has been accepted as the law of the land.

3. That the President is by the Constitution invested with certain important political powers and in their exercise uses his own discretion, and appoints officers to aid him who acts by his authority and conform to his orders, and their acts are his acts and not examinable by the courts.

4. But when the legislature imposes upon these of-

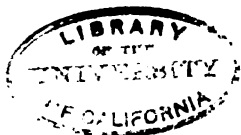
ficers appointed by the President other duties on which the rights of individuals are dependent, he is an officer of the law, amenable to the law for his conduct. So far as the heads of departments are the political or confidential agents of the President, so far their acts are only politically and not judicially examinable. Where specific duties are assigned by law, on which individual rights depend, a person aggrieved may apply to the courts for a remedy.

5. But *original* jurisdiction to grant a writ of mandamus in such a case is not conferred on the Supreme Court.

6. The 13th section of the Judiciary Act (1 Stats. at Large, 81) which attempts to confer on the Supreme Court power to issue writs of mandamus, in classes of cases of original jurisdiction, is imperative and void, as it contravenes the Constitution the Congress can not enlarge the jurisdiction of the court.

7. An act of Congress repugnant to the Constitution is void.

As the Court decided against its jurisdiction the case was dismissed, but the principles enunciated have ever since been regarded as sound and recognized as law and repeatedly followed. See, Notes of Decisions of Supreme Court.



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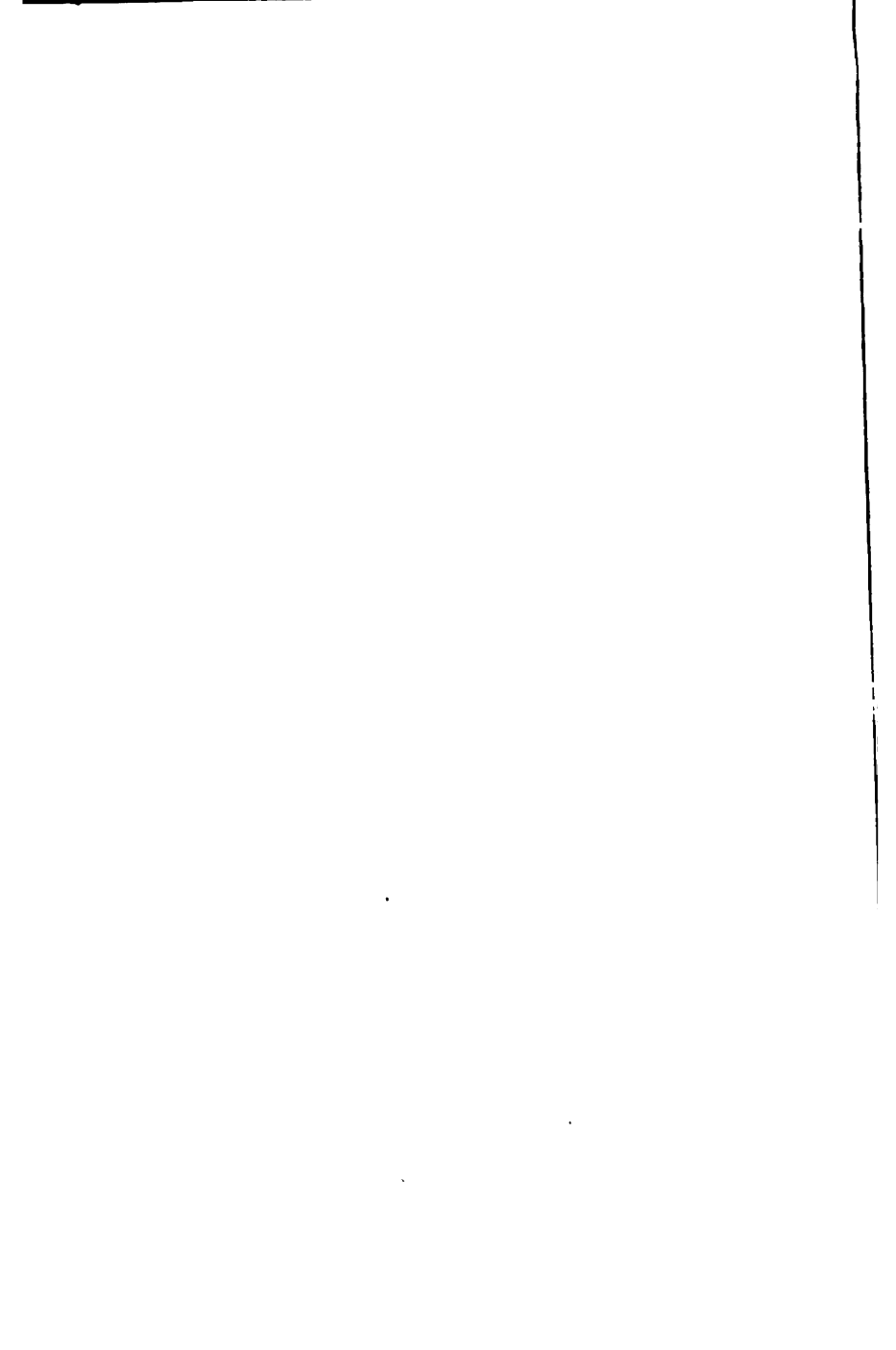
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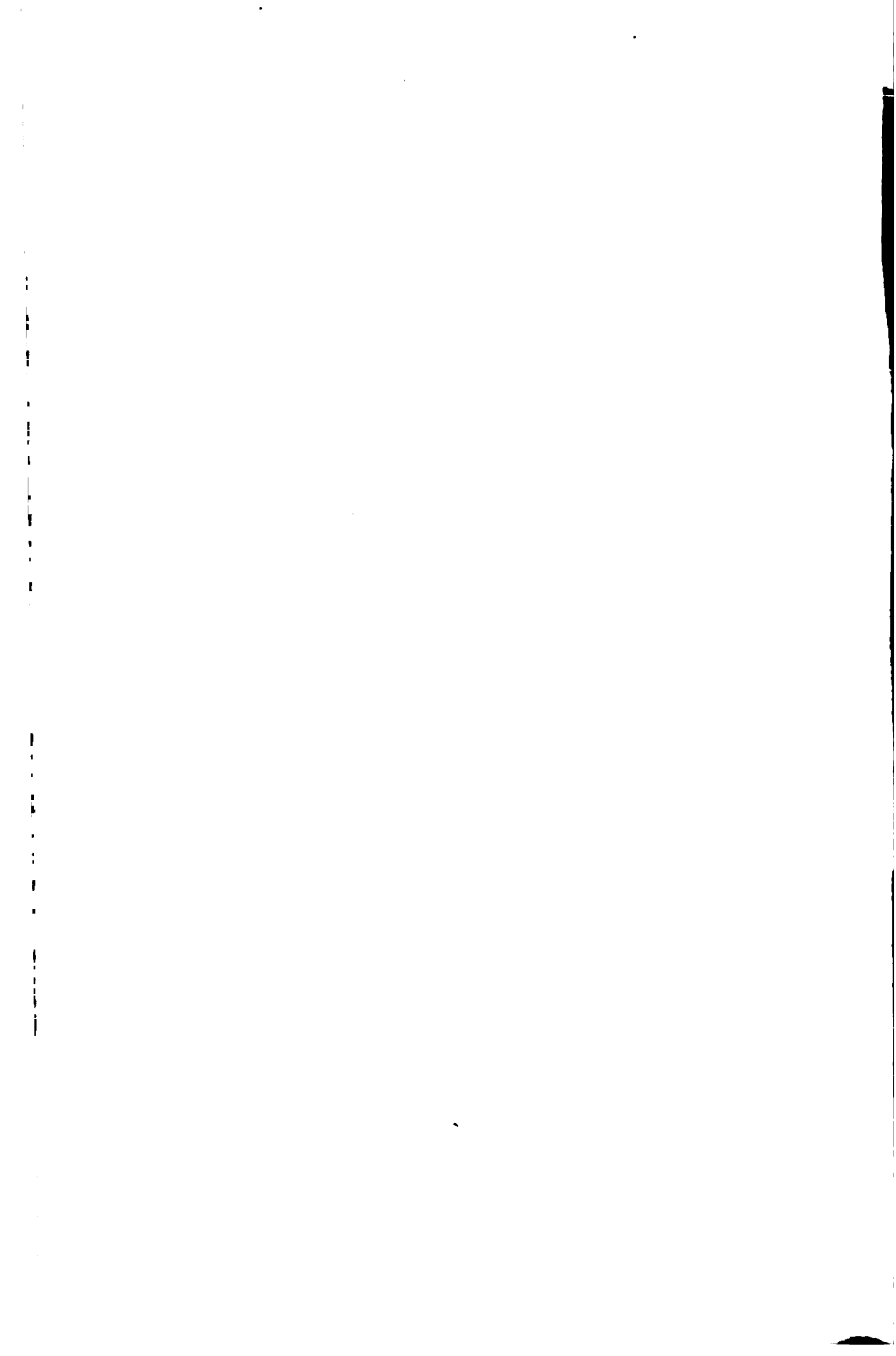
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